

By the Committee on Judiciary; and 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; amending ss. 765.302, 765.303, 765.304,
47 765.306, 765.404, and 765.516, F.S.; conforming
48 provisions to changes made by the act; providing an
49 effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Paragraph (b) of subsection (1) and paragraph
54 (a) of subsection (2) of section 743.0645, Florida Statutes, are
55 amended to read:

56 743.0645 Other persons who may consent to medical care or
57 treatment of a minor.—

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

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

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

78 (a) A health care surrogate designated under s. 765.2035
79 after September 30, 2015, or a person who possesses a power of
80 attorney to provide medical consent for the minor. A health care
81 surrogate designation under s. 765.2035 executed after September
82 30, 2015, and a power of attorney executed after July 1, 2001,
83 to provide medical consent for a minor includes the power to
84 consent to medically necessary surgical and general anesthesia
85 services for the minor unless such services are excluded by the
86 individual executing the health care surrogate for a minor or
87 power of attorney.

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88

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

92 Section 2. Section 765.101, Florida Statutes, is amended to
93 read:

94 765.101 Definitions.—As used in this chapter:

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

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

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

115 (4) "End-stage condition" means an irreversible condition
116 that is caused by injury, disease, or illness which has resulted

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117 in progressively severe and permanent deterioration, and which,
118 to a reasonable degree of medical probability, treatment of the
119 condition would be ineffective.

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

127 (6)~~(5)~~ "Health care decision" means:

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

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

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

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

140 (7)~~(6)~~ "Health care facility" means a hospital, nursing
141 home, hospice, home health agency, or health maintenance
142 organization licensed in this state, or any facility subject to
143 part I of chapter 394.

144 (8)~~(7)~~ "Health care provider" or "provider" means any
145 person licensed, certified, or otherwise authorized by law to

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146 administer health care in the ordinary course of business or
147 practice of a profession.

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

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

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

161 (10)~~(8)~~ "Incapacity" or "incompetent" means the patient is
162 physically or mentally unable to communicate a willful and
163 knowing health care decision. For the purposes of making an
164 anatomical gift, the term also includes a patient who is
165 deceased.

166 (11)~~(9)~~ "Informed consent" means consent voluntarily given
167 by a person after a sufficient explanation and disclosure of the
168 subject matter involved to enable that person to have a general
169 understanding of the treatment or procedure and the medically
170 acceptable alternatives, including the substantial risks and
171 hazards inherent in the proposed treatment or procedures, and to
172 make a knowing health care decision without coercion or undue
173 influence.

174 (12)~~(10)~~ "Life-prolonging procedure" means any medical

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175 procedure, treatment, or intervention, including artificially
176 provided sustenance and hydration, which sustains, restores, or
177 supplants a spontaneous vital function. The term does not
178 include the administration of medication or performance of
179 medical procedure, when such medication or procedure is deemed
180 necessary to provide comfort care or to alleviate pain.

181 (13)~~(11)~~ "Living will" or "declaration" means:

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

184 (b) A witnessed oral statement made by the principal
185 expressing the principal's instructions concerning life-
186 prolonging procedures.

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

190 (15)~~(12)~~ "Persistent vegetative state" means a permanent
191 and irreversible condition of unconsciousness in which there is:

192 (a) The absence of voluntary action or cognitive behavior
193 of any kind.

194 (b) An inability to communicate or interact purposefully
195 with the environment.

196 (16)~~(13)~~ "Physician" means a person licensed pursuant to
197 chapter 458 or chapter 459.

198 (17) "Primary physician" means a physician designated by an
199 individual or the individual's surrogate, proxy, or agent under
200 a durable power of attorney, as provided in chapter 709, to have
201 primary responsibility for the individual's health care or, in
202 the absence of a designation or if the designated physician is
203 not reasonably available, a physician who undertakes the

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204 responsibility.

205 (18)~~(14)~~ "Principal" means a competent adult executing an
206 advance directive and on whose behalf health care decisions are
207 to be made or health care information is to be received, or
208 both.

209 (19)~~(15)~~ "Proxy" means a competent adult who has not been
210 expressly designated to make health care decisions for a
211 particular incapacitated individual, but who, nevertheless, is
212 authorized pursuant to s. 765.401 to make health care decisions
213 for such individual.

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

218 (21)~~(16)~~ "Surrogate" means any competent adult expressly
219 designated by a principal to make health care decisions and to
220 receive health information. The principal may stipulate whether
221 the authority of the surrogate to make health care decisions or
222 to receive health information is exercisable immediately without
223 the necessity for a determination of incapacity or only upon the
224 principal's incapacity as provided in s. 765.204 ~~on behalf of~~
225 ~~the principal upon the principal's incapacity.~~

226 (22)~~(17)~~ "Terminal condition" means a condition caused by
227 injury, disease, or illness from which there is no reasonable
228 medical probability of recovery and which, without treatment,
229 can be expected to cause death.

230 Section 3. Subsections (3) through (6) of section 765.102,
231 Florida Statutes, are renumbered as subsections (4) through (7),
232 respectively, present subsections (2) and (3) are amended, and a

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233 new subsection (3) is added to that section, to read:

234 765.102 Legislative findings and intent.—

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

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

254 (4)~~(3)~~ The Legislature recognizes that for some the
255 administration of life-prolonging medical procedures may result
256 in only a precarious and burdensome existence. In order to
257 ensure that the rights and intentions of a person may be
258 respected even after he or she is no longer able to participate
259 actively in decisions concerning himself or herself, and to
260 encourage communication among such patient, his or her family,
261 and his or her physician, the Legislature declares that the laws

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262 of this state recognize the right of a competent adult to make
263 an advance directive instructing his or her physician to
264 provide, withhold, or withdraw life-prolonging procedures, or to
265 designate another to make the health care ~~treatment~~ decision for
266 him or her in the event that such person should become
267 incapacitated and unable to personally direct his or her health
268 ~~medical~~ care.

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

271 765.104 Amendment or revocation.—

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

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

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

278 (c) By means of an oral expression of intent to amend or
279 revoke; or

280 (d) By means of a subsequently executed advance directive
281 that is materially different from a previously executed advance
282 directive.

283 Section 5. Section 765.105, Florida Statutes, is amended to
284 read:

285 765.105 Review of surrogate or proxy's decision.—

286 (1) The patient's family, the health care facility, or the
287 primary attending physician, or any other interested person who
288 may reasonably be expected to be directly affected by the
289 surrogate or proxy's decision concerning any health care
290 decision may seek expedited judicial intervention pursuant to

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291 rule 5.900 of the Florida Probate Rules, if that person
292 believes:

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

296 (b)~~(2)~~ The advance directive is ambiguous, or the patient
297 has changed his or her mind after execution of the advance
298 directive;

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

302 (d)~~(4)~~ The surrogate or proxy has failed to discharge
303 duties, or incapacity or illness renders the surrogate or proxy
304 incapable of discharging duties;

305 (e)~~(5)~~ The surrogate or proxy has abused his or her powers;
306 or

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

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

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

315 765.1103 Pain management and palliative care.—

316 (1) A patient shall be given information concerning pain
317 management and palliative care when he or she discusses with the
318 primary ~~attending or treating~~ physician, or such physician's
319 designee, the diagnosis, planned course of treatment,

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320 alternatives, risks, or prognosis for his or her illness. If the
321 patient is incapacitated, the information shall be given to the
322 patient's health care surrogate or proxy, court-appointed
323 guardian as provided in chapter 744, or attorney in fact under a
324 durable power of attorney as provided in chapter 709. The court-
325 appointed guardian or attorney in fact must have been delegated
326 authority to make health care decisions on behalf of the
327 patient.

328 Section 7. Section 765.1105, Florida Statutes, is amended
329 to read:

330 765.1105 Transfer of a patient.—

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

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

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

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

348 (a) Transfer the patient to another health care provider or

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349 facility. The health care provider or facility shall pay the
350 costs for transporting the patient to another health care
351 provider or facility; or

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

355 Section 8. Subsections (1), (3), and (4) of section
356 765.202, Florida Statutes, are amended, subsections (6) and (7)
357 are renumbered as subsections (7) and (8), respectively, and a
358 new subsection (6) is added to that section, to read:

359 765.202 Designation of a health care surrogate.-

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

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

376 (4) If neither the designated surrogate nor the designated
377 alternate surrogate is willing, able, or reasonably available

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378 ~~able or willing~~ to make health care decisions on behalf of the
 379 principal and in accordance with the principal's instructions,
 380 the health care facility may seek the appointment of a proxy
 381 pursuant to part IV.

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

387 Section 9. Section 765.203, Florida Statutes, is amended to
 388 read:

389 765.203 Suggested form of designation.—A written
 390 designation of a health care surrogate executed pursuant to this
 391 chapter may, but need not be, in the following form:

392

393 DESIGNATION OF HEALTH CARE SURROGATE

394

395 I, ...name..., designate as my health care surrogate under s.

396 765.202, Florida Statutes:

397

398 Name: ...(name of health care surrogate)...

399 Address: ...(address)...

400 Phone: ...(telephone)...

401

402 If my health care surrogate is not willing, able, or reasonably

403 available to perform his or her duties, I designate as my

404 alternate health care surrogate:

405

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

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407 Address: ... (address)...408 Phone: ... (telephone)...

409

410 INSTRUCTIONS FOR HEALTH CARE

411

412 I authorize my health care surrogate to:413 ...(Initial here)... Receive any of my health information,414 whether oral or recorded in any form or medium, that:415 1. Is created or received by a health care provider, health416 care facility, health plan, public health authority, employer,417 life insurer, school or university, or health care418 clearinghouse; and419 2. Relates to my past, present, or future physical or420 mental health or condition; the provision of health care to me;421 or the past, present, or future payment for the provision of422 health care to me.423 I further authorize my health care surrogate to:424 ...(Initial here)... Make all health care decisions for me,425 which means he or she has the authority to:426 1. Provide informed consent, refusal of consent, or427 withdrawal of consent to any and all of my health care,428 including life-prolonging procedures.429 2. Apply on my behalf for private, public, government, or430 veterans' benefits to defray the cost of health care.431 3. Access my health information reasonably necessary for432 the health care surrogate to make decisions involving my health433 care and to apply for benefits for me.434 4. Decide to make an anatomical gift pursuant to part V of435 chapter 765, Florida Statutes.

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

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

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

449 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT
 450 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND
 451 THIS DESIGNATION BY:

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

454 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN
 455 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY
 456 DIRECTION;

457 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE
 458 THIS DESIGNATION; OR

459 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
 460 FROM THIS DESIGNATION.

461
 462 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
 463 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
 464 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE

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465 FOLLOWING BOXES:

466

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

470

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

474

475 SIGNATURES: Sign and date the form here:

476 ...(date)... ..(sign your name)...

477 ...(address)... ..(print your name)...

478 ...(city)... ..(state)...

479

480 SIGNATURES OF WITNESSES:

481 First witness _____ Second witness

482 ...(print name)... ...(print name)...

483 ...(address)... ...(address)...

484 ...(city)... ...(state)... ...(city)... ...(state)...

485 ...(signature of witness)... ...(signature of witness)...

486 ...(date)... ...(date)...

487

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

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

493

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494 Name:.....

495 Address:.....

Zip

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

496

497 Phone:.....

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

500 Name:.....

501 Address:.....

Zip

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

502

503 Phone:.....

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

509 Additional instructions (optional):.....

510

511

512

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

518 Name:.....

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519 Name:.....

520

521

522 Signed:.....

523 Date:.....

Witnesse

s: 1.....

524

2.....

525

526 Section 10. Section 765.2035, Florida Statutes, is created
527 to read:

528 765.2035 Designation of a health care surrogate for a
529 minor.-

530 (1) A natural guardian as defined in s. 744.301(1), legal
531 custodian, or legal guardian of the person of a minor may
532 designate a competent adult to serve as a surrogate to make
533 health care decisions for the minor. Such designation shall be
534 made by a written document signed by the minor's principal in
535 the presence of two subscribing adult witnesses. If a minor's
536 principal is unable to sign the instrument, the principal may,
537 in the presence of witnesses, direct that another person sign
538 the minor's principal's name as required by this subsection. An
539 exact copy of the instrument shall be provided to the surrogate.

540 (2) The person designated as surrogate may not act as
541 witness to the execution of the document designating the health
542 care surrogate.

543 (3) A document designating a health care surrogate may also
544 designate an alternate surrogate; however, such designation must

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545 be explicit. The alternate surrogate may assume his or her
546 duties as surrogate if the original surrogate is not willing,
547 able, or reasonably available to perform his or her duties. The
548 minor's principal's failure to designate an alternate surrogate
549 does not invalidate the designation.

550 (4) If neither the designated surrogate or the designated
551 alternate surrogate is willing, able, or reasonably available to
552 make health care decisions for the minor on behalf of the
553 minor's principal and in accordance with the minor's principal's
554 instructions, s. 743.0645(2) shall apply as if no surrogate had
555 been designated.

556 (5) A natural guardian as defined in s. 744.301(1), legal
557 custodian, or legal guardian of the person of a minor may
558 designate a separate surrogate to consent to mental health
559 treatment for the minor. However, unless the document
560 designating the health care surrogate expressly states
561 otherwise, the court shall assume that the health care surrogate
562 authorized to make health care decisions for a minor under this
563 chapter is also the minor's principal's choice to make decisions
564 regarding mental health treatment for the minor.

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

570 (7) A written designation of a health care surrogate
571 executed pursuant to this section establishes a rebuttable
572 presumption of clear and convincing evidence of the minor's
573 principal's designation of the surrogate and becomes effective

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574 pursuant to s. 743.0645(2) (a).

575 Section 11. Section 765.2038, Florida Statutes, is created
576 to read:

577 765.2038 Designation of health care surrogate for a minor;
578 suggested form.—A written designation of a health care surrogate
579 for a minor executed pursuant to this chapter may, but need not
580 be, in the following form:

581 DESIGNATION OF HEALTH CARE SURROGATE

582 FOR MINOR

583 I/We, ... (name/names) ..., the [....] natural guardian(s)
584 as defined in s. 744.301(1), Florida Statutes; [....] legal
585 custodian(s); [....] legal guardian(s) [check one] of the
586 following minor(s):

- 587
- 588;
- 589;
- 590,

591

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

597

598 Name: ... (name) ...
599 Address: ... (address) ...
600 Zip Code: ... (zip code) ...
601 Phone: ... (telephone) ...
602

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

607
608 Name: ... (name)...
609 Address: ... (address)...
610 Zip Code: ... (zip code)...
611 Phone: ... (telephone)...

612
613 I/We authorize and request all physicians, hospitals, or
614 other providers of medical services to follow the instructions
615 of my/our surrogate or alternate surrogate, as the case may be,
616 at any time and under any circumstances whatsoever, with regard
617 to medical treatment and surgical and diagnostic procedures for
618 a minor, provided the medical care and treatment of any minor is
619 on the advice of a licensed physician.

620
621 I/We fully understand that this designation will permit
622 my/our designee to make health care decisions for a minor and to
623 provide, withhold, or withdraw consent on my/our behalf, to
624 apply for public benefits to defray the cost of health care, and
625 to authorize the admission or transfer of a minor to or from a
626 health care facility.

627
628 I/We will notify and send a copy of this document to the
629 following person(s) other than my/our surrogate, so that they
630 may know the identity of my/our surrogate:

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632 Name: ... (name)...633 Name: ... (name)...

634

635 Signed: ... (signature)...636 Date: ... (date)...

637

638 WITNESSES:639 1. ... (witness)...640 2. ... (witness)...

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

643 765.204 Capacity of principal; procedure.-

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

649 (2) If a principal's capacity to make health care decisions
650 for herself or himself or provide informed consent is in
651 question, the primary or attending physician shall evaluate the
652 principal's capacity and, if the evaluating physician concludes
653 that the principal lacks capacity, enter that evaluation in the
654 principal's medical record. If the evaluating ~~attending~~
655 physician has a question as to whether the principal lacks
656 capacity, another physician shall also evaluate the principal's
657 capacity, and if the second physician agrees that the principal
658 lacks the capacity to make health care decisions or provide
659 informed consent, the health care facility shall enter both
660 physician's evaluations in the principal's medical record. If

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661 the principal has designated a health care surrogate or has
662 delegated authority to make health care decisions to an attorney
663 in fact under a durable power of attorney, the health care
664 facility shall notify such surrogate or attorney in fact in
665 writing that her or his authority under the instrument has
666 commenced, as provided in chapter 709 or s. 765.203. If an
667 attending physician determines that the principal lacks
668 capacity, the hospital in which the attending physician made
669 such a determination shall notify the principal's primary
670 physician of the determination.

671 (3) The surrogate's authority shall commence upon a
672 determination under subsection (2) that the principal lacks
673 capacity, and such authority shall remain in effect until a
674 determination that the principal has regained such capacity.
675 Upon commencement of the surrogate's authority, a surrogate who
676 is not the principal's spouse shall notify the principal's
677 spouse or adult children of the principal's designation of the
678 surrogate. In the event the primary ~~attending~~ physician
679 determines that the principal has regained capacity, the
680 authority of the surrogate shall cease, but shall recommence if
681 the principal subsequently loses capacity as determined pursuant
682 to this section.

683 (4) Notwithstanding subsections (2) and (3), if the
684 principal has designated a health care surrogate and has
685 stipulated that the authority of the surrogate is to take effect
686 immediately, or has appointed an agent under a durable power of
687 attorney as provided in chapter 709 to make health care
688 decisions for the principal, the health care facility shall
689 notify such surrogate or agent in writing when a determination

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690 of incapacity has been entered into the principal's medical
691 record.

692 (5)~~(4)~~ A determination made pursuant to this section that a
693 principal lacks capacity to make health care decisions shall not
694 be construed as a finding that a principal lacks capacity for
695 any other purpose.

696 (6)~~(5)~~ If ~~In the event~~ the surrogate is required to consent
697 to withholding or withdrawing life-prolonging procedures, ~~the~~
698 ~~provisions of part III~~ applies ~~shall apply~~.

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

701 765.205 Responsibility of the surrogate.—

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

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

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

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

715 765.302 Procedure for making a living will; notice to
716 physician.—

717 (2) It is the responsibility of the principal to provide
718 for notification to her or his primary ~~attending or treating~~

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719 physician that the living will has been made. In the event the
 720 principal is physically or mentally incapacitated at the time
 721 the principal is admitted to a health care facility, any other
 722 person may notify the physician or health care facility of the
 723 existence of the living will. A primary ~~An attending or treating~~
 724 physician or health care facility which is so notified shall
 725 promptly make the living will or a copy thereof a part of the
 726 principal's medical records.

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

729 765.303 Suggested form of a living will.—

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

732 Living Will

733 Declaration made this day of, ... (year)...., I,
 734, willfully and voluntarily make known my desire that my
 735 dying not be artificially prolonged under the circumstances set
 736 forth below, and I do hereby declare that, if at any time I am
 737 incapacitated and

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

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

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

741 and if my primary ~~attending or treating~~ physician and another
 742 consulting physician have determined that there is no reasonable
 743 medical probability of my recovery from such condition, I direct
 744 that life-prolonging procedures be withheld or withdrawn when
 745 the application of such procedures would serve only to prolong
 746 artificially the process of dying, and that I be permitted to
 747 die naturally with only the administration of medication or the

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748 performance of any medical procedure deemed necessary to provide
749 me with comfort care or to alleviate pain.

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

754 In the event that I have been determined to be unable to
755 provide express and informed consent regarding the withholding,
756 withdrawal, or continuation of life-prolonging procedures, I
757 wish to designate, as my surrogate to carry out the provisions
758 of this declaration:

759 Name:.....

760 Address:.....

Zip

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

762
763 Phone:.....

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

766 Additional Instructions (optional):
767
768
769

770(Signed).....
771Witness.....
772Address.....
773Phone.....
774Witness.....

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775Address. . . .

776Phone. . . .

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

779 765.304 Procedure for living will.—

780 (1) If a person has made a living will expressing his or
781 her desires concerning life-prolonging procedures, but has not
782 designated a surrogate to execute his or her wishes concerning
783 life-prolonging procedures or designated a surrogate under part
784 II, the person's primary attending physician may proceed as
785 directed by the principal in the living will. In the event of a
786 dispute or disagreement concerning the primary attending
787 physician's decision to withhold or withdraw life-prolonging
788 procedures, the primary attending physician shall not withhold
789 or withdraw life-prolonging procedures pending review under s.
790 765.105. If a review of a disputed decision is not sought within
791 7 days following the primary attending physician's decision to
792 withhold or withdraw life-prolonging procedures, the primary
793 ~~attending~~ physician may proceed in accordance with the
794 principal's instructions.

795 Section 17. Section 765.306, Florida Statutes, is amended
796 to read:

797 765.306 Determination of patient condition.—In determining
798 whether the patient has a terminal condition, has an end-stage
799 condition, or is in a persistent vegetative state or may recover
800 capacity, or whether a medical condition or limitation referred
801 to in an advance directive exists, the patient's primary
802 ~~attending or treating~~ physician and at least one other
803 consulting physician must separately examine the patient. The

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804 findings of each such examination must be documented in the
805 patient's medical record and signed by each examining physician
806 before life-prolonging procedures may be withheld or withdrawn.

807 Section 18. Section 765.404, Florida Statutes, is amended
808 to read:

809 765.404 Persistent vegetative state.—For persons in a
810 persistent vegetative state, as determined by the person's
811 primary attending physician in accordance with currently
812 accepted medical standards, who have no advance directive and
813 for whom there is no evidence indicating what the person would
814 have wanted under such conditions, and for whom, after a
815 reasonably diligent inquiry, no family or friends are available
816 or willing to serve as a proxy to make health care decisions for
817 them, life-prolonging procedures may be withheld or withdrawn
818 under the following conditions:

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

822 (2) The guardian and the person's primary attending
823 physician, in consultation with the medical ethics committee of
824 the facility where the patient is located, conclude that the
825 condition is permanent and that there is no reasonable medical
826 probability for recovery and that withholding or withdrawing
827 life-prolonging procedures is in the best interest of the
828 patient. If there is no medical ethics committee at the
829 facility, the facility must have an arrangement with the medical
830 ethics committee of another facility or with a community-based
831 ethics committee approved by the Florida Bio-ethics Network. The
832 ethics committee shall review the case with the guardian, in

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833 consultation with the person's primary ~~attending~~ physician, to
834 determine whether the condition is permanent and there is no
835 reasonable medical probability for recovery. The individual
836 committee members and the facility associated with an ethics
837 committee shall not be held liable in any civil action related
838 to the performance of any duties required in this subsection.

839 Section 19. Paragraph (c) of subsection (1) of section
840 765.516, Florida Statutes, is amended to read:

841 765.516 Donor amendment or revocation of anatomical gift.-

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

844 (c) A statement made during a terminal illness or injury
845 addressed to the primary ~~an attending~~ physician, who must
846 communicate the revocation of the gift to the procurement
847 organization.

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