

By the Committees on Rules; and 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; providing
45 that a health care provider may justifiably rely on
46 decisions made by a surrogate; providing for when
47 there are conflicting decisions between surrogate and
48 patient; amending ss. 765.205, 765.302, 765.303,
49 765.304, 765.306, 765.404, and 765.516, F.S.;

50 conforming provisions to changes made by the act;
51 providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

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

58 743.0645 Other persons who may consent to medical care or

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59 treatment of a minor.—

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

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

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

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

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88 individual executing the health care surrogate for a minor or
89 power of attorney.

90

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

94 Section 2. Section 765.101, Florida Statutes, is amended to
95 read:

96 765.101 Definitions.—As used in this chapter:

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

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

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

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

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

129 (6)~~(5)~~ "Health care decision" means:

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

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

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

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

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

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146 (8)~~(7)~~ "Health care provider" or "provider" means any
147 person licensed, certified, or otherwise authorized by law to
148 administer health care in the ordinary course of business or
149 practice of a profession.

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

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

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

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

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

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175 influence.

176 (12)~~(10)~~ "Life-prolonging procedure" means any medical
177 procedure, treatment, or intervention, including artificially
178 provided sustenance and hydration, which sustains, restores, or
179 supplants a spontaneous vital function. The term does not
180 include the administration of medication or performance of
181 medical procedure, when such medication or procedure is deemed
182 necessary to provide comfort care or to alleviate pain.

183 (13)~~(11)~~ "Living will" or "declaration" means:

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

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

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

192 (15)~~(12)~~ "Persistent vegetative state" means a permanent
193 and irreversible condition of unconsciousness in which there is:

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

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

198 (16)~~(13)~~ "Physician" means a person licensed pursuant to
199 chapter 458 or chapter 459.

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

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204 the absence of a designation or if the designated physician is
205 not reasonably available, a physician who undertakes the
206 responsibility.

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

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

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

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

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

232 Section 3. Subsections (3) through (6) of section 765.102,

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233 Florida Statutes, are renumbered as subsections (4) through (7),
234 respectively, present subsections (2) and (3) are amended, and a
235 new subsection (3) is added to that section, to read:

236 765.102 Legislative findings and intent.—

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

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

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

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

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

273 765.104 Amendment or revocation.—

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

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

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

280 (c) By means of an oral expression of intent to amend or
281 revoke; or

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

285 Section 5. Section 765.105, Florida Statutes, is amended to
286 read:

287 765.105 Review of surrogate or proxy's decision.—

288 (1) The patient's family, the health care facility, or the
289 primary attending ~~attending~~ physician, or any other interested person who
290 may reasonably be expected to be directly affected by the

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291 surrogate or proxy's decision concerning any health care
292 decision may seek expedited judicial intervention pursuant to
293 rule 5.900 of the Florida Probate Rules, if that person
294 believes:

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

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

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

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

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

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

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

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

317 765.1103 Pain management and palliative care.—

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

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

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

332 765.1105 Transfer of a patient.—

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

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

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

346 (2) A health care provider or facility that is unwilling to
347 carry out the wishes of the patient or the treatment decision of
348 his or her surrogate or proxy because of moral or ethical

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349 beliefs must within 7 days either:

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

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

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

361 765.202 Designation of a health care surrogate.—

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

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

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

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

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

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

394

395 DESIGNATION OF HEALTH CARE SURROGATE

396

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

399

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

401 Address: ...(address)...

402 Phone: ...(telephone)...

403

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

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407

408 Name: ... (name of alternate health care surrogate)...409 Address: ... (address)...410 Phone: ... (telephone)...

411

412 INSTRUCTIONS FOR HEALTH CARE

413

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, health418 care facility, health plan, public health authority, employer,419 life insurer, school or university, or health care420 clearinghouse; and421 2. Relates to my past, present, or future physical or422 mental health or condition; the provision of health care to me;423 or the past, present, or future payment for the provision of424 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, or429 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, or432 veterans' benefits to defray the cost of health care.433 3. Access my health information reasonably necessary for434 the health care surrogate to make decisions involving my health435 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
439 restrictions:.....
440
441

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

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

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

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

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

459 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE
460 THIS DESIGNATION; OR

461 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
462 FROM THIS DESIGNATION.

463
464 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY

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465 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
466 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
467 FOLLOWING BOXES:

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

472
473 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
474 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
475 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), ANY INSTRUCTIONS OR
476 HEALTH CARE DECISIONS I MAKE, EITHER VERBALLY OR IN WRITING,
477 WHILE I POSSESS CAPACITY SHALL SUPERCEDE ANY INSTRUCTIONS OR
478 HEALTH CARE DECISIONS MADE BY MY SURROGATE THAT ARE IN MATERIAL
479 CONFLICT WITH THOSE MADE BY ME.

480
481 SIGNATURES: Sign and date the form here:
482 ...(date)... ..(sign your name)...
483 ...(address)... ..(print your name)...
484 ...(city)... ..(state)...

485
486 SIGNATURES OF WITNESSES:
487 First witness _____ Second witness _____
488 ...(print name)... ..(print name)...
489 ...(address)... ..(address)...
490 ...(city)... ..(state)... ..(city)... ..(state)...
491 ...(signature of witness)... ..(signature of witness)...
492 ...(date)... ..(date)...

493

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

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

500 Name:.....

501 Address:.....

Zip

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

502
503 Phone:.....

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

506 Name:.....

507 Address:.....

Zip

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

508
509 Phone:.....

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

515 Additional instructions (optional):.....

516

517

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

524 Name:.....
525 Name:.....
526
527
528 Signed:.....
529 Date:.....

Witnesse

s: 1.....
2.....

530
531

532 Section 10. Section 765.2035, Florida Statutes, is created
533 to read:

534 765.2035 Designation of a health care surrogate for a
535 minor.-

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

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545 exact copy of the instrument shall be provided to the surrogate.

546 (2) The person designated as surrogate may not act as
547 witness to the execution of the document designating the health
548 care surrogate.

549 (3) A document designating a health care surrogate may also
550 designate an alternate surrogate; however, such designation must
551 be explicit. The alternate surrogate may assume his or her
552 duties as surrogate if the original surrogate is not willing,
553 able, or reasonably available to perform his or her duties. The
554 minor's principal's failure to designate an alternate surrogate
555 does not invalidate the designation.

556 (4) If neither the designated surrogate or the designated
557 alternate surrogate is willing, able, or reasonably available to
558 make health care decisions for the minor on behalf of the
559 minor's principal and in accordance with the minor's principal's
560 instructions, s. 743.0645(2) shall apply as if no surrogate had
561 been designated.

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

571 (6) Unless the document states a time of termination, the
572 designation shall remain in effect until revoked by the minor's
573 principal. An otherwise valid designation of a surrogate for a

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574 minor shall not be invalid solely because it was made before the
575 birth of the minor.

576 (7) A written designation of a health care surrogate
577 executed pursuant to this section establishes a rebuttable
578 presumption of clear and convincing evidence of the minor's
579 principal's designation of the surrogate and becomes effective
580 pursuant to s. 743.0645(2) (a).

581 Section 11. Section 765.2038, Florida Statutes, is created
582 to read:

583 765.2038 Designation of health care surrogate for a minor;
584 suggested form.—A written designation of a health care surrogate
585 for a minor executed pursuant to this chapter may, but need not
586 be, in the following form:

587 DESIGNATION OF HEALTH CARE SURROGATE
588 FOR MINOR

589 I/We, ... (name/names) ..., the [....] natural guardian(s)
590 as defined in s. 744.301(1), Florida Statutes; [....] legal
591 custodian(s); [....] legal guardian(s) [check one] of the
592 following minor(s):

593
594;
595;
596,

597
598 pursuant to s. 765.2035, Florida Statutes, designate the
599 following person to act as my/our surrogate for health care
600 decisions for such minor(s) in the event that I/we am/are not
601 able or reasonably available to provide consent for medical
602 treatment and surgical and diagnostic procedures:

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Name: ... (name)...
Address: ... (address)...
Zip Code: ... (zip code)...
Phone: ... (telephone)...

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

Name: ... (name)...
Address: ... (address)...
Zip Code: ... (zip code)...
Phone: ... (telephone)...

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

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

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632 health care facility.

633

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

637

638 Name: ... (name)...

639 Name: ... (name)...

640

641 Signed: ... (signature)...

642 Date: ... (date)...

643

644 WITNESSES:

645 1. ... (witness)...

646 2. ... (witness)...

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

649 765.204 Capacity of principal; procedure.—

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

655 (2) If a principal's capacity to make health care decisions
 656 for herself or himself or provide informed consent is in
 657 question, the primary or attending physician shall evaluate the
 658 principal's capacity and, if the evaluating physician concludes
 659 that the principal lacks capacity, enter that evaluation in the
 660 principal's medical record. If the evaluating ~~attending~~

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661 physician has a question as to whether the principal lacks
662 capacity, another physician shall also evaluate the principal's
663 capacity, and if the second physician agrees that the principal
664 lacks the capacity to make health care decisions or provide
665 informed consent, the health care facility shall enter both
666 physician's evaluations in the principal's medical record. If
667 the principal has designated a health care surrogate or has
668 delegated authority to make health care decisions to an attorney
669 in fact under a durable power of attorney, the health care
670 facility shall notify such surrogate or attorney in fact in
671 writing that her or his authority under the instrument has
672 commenced, as provided in chapter 709 or s. 765.203. If an
673 attending physician determines that the principal lacks
674 capacity, the hospital in which the attending physician made
675 such a determination shall notify the principal's primary
676 physician of the determination.

677 (3) The surrogate's authority shall commence either upon a
678 determination under subsection (2) that the principal lacks
679 capacity, or upon a stipulation of such authority pursuant to s.
680 765.101(21). ~~and~~ Such authority shall remain in effect until a
681 determination that the principal has regained such capacity when
682 the authority commenced as a result of incapacity, or until its
683 revocation in such cases where the authority commenced
684 immediately pursuant to 765.101(21). Upon commencement of the
685 surrogate's authority, a surrogate who is not the principal's
686 spouse shall notify the principal's spouse or adult children of
687 the principal's designation of the surrogate. Except where the
688 principal provided immediately exercisable authority to the
689 surrogate pursuant to s. 765.101(21), in the event the primary

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690 or attending physician determines that the principal has
691 regained capacity, the authority of the surrogate shall cease,
692 but shall recommence if the principal subsequently loses
693 capacity as determined pursuant to this section. A health care
694 provider will not be liable for relying upon health care
695 decisions made by a surrogate while a principal lacks capacity.
696 At any time when a principal lacks capacity, a health care
697 decision made on a principal's behalf by a surrogate shall be
698 effective to the same extent as a decision made by the
699 principal. When a principal possesses capacity, health care
700 decisions of the principal will take precedence over decisions
701 made by the surrogate that present a material conflict.

702 (4) Notwithstanding subsections (2) and (3), if the
703 principal has designated a health care surrogate and has
704 stipulated that the authority of the surrogate is to take effect
705 immediately, or has appointed an agent under a durable power of
706 attorney as provided in chapter 709 to make health care
707 decisions for the principal, the health care facility shall
708 notify such surrogate or agent in writing when a determination
709 of incapacity has been entered into the principal's medical
710 record.

711 (5)~~(4)~~ A determination made pursuant to this section that a
712 principal lacks capacity to make health care decisions shall not
713 be construed as a finding that a principal lacks capacity for
714 any other purpose.

715 (6)~~(5)~~ If ~~In the event~~ the surrogate is required to consent
716 to withholding or withdrawing life-prolonging procedures, ~~the~~
717 ~~provisions of part III applies shall apply.~~

718 Section 13. Paragraph (d) of subsection (1) and subsection

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719 (2) of section 765.205, Florida Statutes, are amended to read:

720 765.205 Responsibility of the surrogate.—

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

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

726 (2) The surrogate may authorize the release of health
727 information ~~and medical records~~ to appropriate persons to ensure
728 the continuity of the principal's health care and may authorize
729 the admission, discharge, or transfer of the principal to or
730 from a health care facility or other facility or program
731 licensed under chapter 400 or chapter 429.

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

734 765.302 Procedure for making a living will; notice to
735 physician.—

736 (2) It is the responsibility of the principal to provide
737 for notification to her or his primary attending or treating
738 physician that the living will has been made. In the event the
739 principal is physically or mentally incapacitated at the time
740 the principal is admitted to a health care facility, any other
741 person may notify the physician or health care facility of the
742 existence of the living will. A primary ~~An attending or treating~~
743 physician or health care facility which is so notified shall
744 promptly make the living will or a copy thereof a part of the
745 principal's medical records.

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

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748 765.303 Suggested form of a living will.—

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

751 Living Will

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

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

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

759 or ...(initial)... I am in a persistent vegetative state
760 and if my primary ~~attending or treating~~ physician and another
761 consulting physician have determined that there is no reasonable
762 medical probability of my recovery from such condition, I direct
763 that life-prolonging procedures be withheld or withdrawn when
764 the application of such procedures would serve only to prolong
765 artificially the process of dying, and that I be permitted to
766 die naturally with only the administration of medication or the
767 performance of any medical procedure deemed necessary to provide
768 me with comfort care or to alleviate pain.

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

773 In the event that I have been determined to be unable to
774 provide express and informed consent regarding the withholding,
775 withdrawal, or continuation of life-prolonging procedures, I
776 wish to designate, as my surrogate to carry out the provisions

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777 of this declaration:

778

779 Name:.....

780 Address:.....

Zip

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

781

782 Phone:.....

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

785 Additional Instructions (optional):

786

787

788

789 (Signed)....

790Witness....

791Address....

792Phone....

793Witness....

794Address....

795Phone....

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

798 765.304 Procedure for living will.-

799 (1) If a person has made a living will expressing his or
800 her desires concerning life-prolonging procedures, but has not
801 designated a surrogate to execute his or her wishes concerning
802 life-prolonging procedures or designated a surrogate under part
803 II, the person's primary attending physician may proceed as

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804 directed by the principal in the living will. In the event of a
805 dispute or disagreement concerning the primary attending
806 physician's decision to withhold or withdraw life-prolonging
807 procedures, the primary attending physician shall not withhold
808 or withdraw life-prolonging procedures pending review under s.
809 765.105. If a review of a disputed decision is not sought within
810 7 days following the primary attending physician's decision to
811 withhold or withdraw life-prolonging procedures, the primary
812 ~~attending~~ physician may proceed in accordance with the
813 principal's instructions.

814 Section 17. Section 765.306, Florida Statutes, is amended
815 to read:

816 765.306 Determination of patient condition.—In determining
817 whether the patient has a terminal condition, has an end-stage
818 condition, or is in a persistent vegetative state or may recover
819 capacity, or whether a medical condition or limitation referred
820 to in an advance directive exists, the patient's primary
821 ~~attending or treating~~ physician and at least one other
822 consulting physician must separately examine the patient. The
823 findings of each such examination must be documented in the
824 patient's medical record and signed by each examining physician
825 before life-prolonging procedures may be withheld or withdrawn.

826 Section 18. Section 765.404, Florida Statutes, is amended
827 to read:

828 765.404 Persistent vegetative state.—For persons in a
829 persistent vegetative state, as determined by the person's
830 primary attending physician in accordance with currently
831 accepted medical standards, who have no advance directive and
832 for whom there is no evidence indicating what the person would

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833 have wanted under such conditions, and for whom, after a
834 reasonably diligent inquiry, no family or friends are available
835 or willing to serve as a proxy to make health care decisions for
836 them, life-prolonging procedures may be withheld or withdrawn
837 under the following conditions:

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

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

858 Section 19. Paragraph (c) of subsection (1) of section
859 765.516, Florida Statutes, is amended to read:

860 765.516 Donor amendment or revocation of anatomical gift.-

861 (1) A donor may amend the terms of or revoke an anatomical

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862 gift by:

863 (c) A statement made during a terminal illness or injury
864 addressed to the primary ~~an attending~~ physician, who must
865 communicate the revocation of the gift to the procurement
866 organization.

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