

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;  
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:

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, but before October 1,  
68 2015, or informed consent as provided by law is required, except  
69 as provided in s. 39.407(3).

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

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

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

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

95           765.101 Definitions.—As used in this chapter:

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

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

105        (2)~~(3)~~ "Close personal friend" means any person 18 years  
 106 of age or older who has exhibited special care and concern for  
 107 the patient, and who presents an affidavit to the health care  
 108 facility or to the primary ~~attending or treating~~ physician  
 109 stating that he or she is a friend of the patient; is willing  
 110 and able to become involved in the patient's health care; and  
 111 has maintained such regular contact with the patient so as to be  
 112 familiar with the patient's activities, health, and religious or  
 113 moral beliefs.

114        (3)~~(4)~~ "End-stage condition" means an irreversible  
 115 condition that is caused by injury, disease, or illness which  
 116 has resulted in progressively severe and permanent  
 117 deterioration, and which, to a reasonable degree of medical  
 118 probability, treatment of the condition would be ineffective.

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

126        (5) "Health care decision" means:

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

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

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

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

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

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

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

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

156 (b) Relates to the past, present, or future physical or

157 mental health or condition of the principal; the provision of  
158 health care to the principal; or the past, present, or future  
159 payment for the provision of health care to the principal.

160 (9)~~(8)~~ "Incapacity" or "incompetent" means the patient is  
161 physically or mentally unable to communicate a willful and  
162 knowing health care decision. For the purposes of making an  
163 anatomical gift, the term also includes a patient who is  
164 deceased.

165 (10)~~(9)~~ "Informed consent" means consent voluntarily given  
166 by a person after a sufficient explanation and disclosure of the  
167 subject matter involved to enable that person to have a general  
168 understanding of the treatment or procedure and the medically  
169 acceptable alternatives, including the substantial risks and  
170 hazards inherent in the proposed treatment or procedures, and to  
171 make a knowing health care decision without coercion or undue  
172 influence.

173 (11)~~(10)~~ "Life-prolonging procedure" means any medical  
174 procedure, treatment, or intervention, including artificially  
175 provided sustenance and hydration, which sustains, restores, or  
176 supplants a spontaneous vital function. The term does not  
177 include the administration of medication or performance of  
178 medical procedure, when such medication or procedure is deemed  
179 necessary to provide comfort care or to alleviate pain.

180 (12)~~(11)~~ "Living will" or "declaration" means:

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

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

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

190 ~~(14)-(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 ~~(15)-(13)~~ "Physician" means a person licensed pursuant to  
197 chapter 458 or chapter 459.

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

205 ~~(17)-(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        ~~(18)~~~~(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        (19) "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        ~~(20)~~~~(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        ~~(21)~~~~(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  
 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  
 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  
 276 of 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  
 284 to 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  
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  
306 powers; 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,  
 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  
 345 to carry out the wishes of the patient or the treatment decision  
 346 of 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  
 349 or 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  
 369 also designate an alternate surrogate provided the designation  
 370 is explicit. The alternate surrogate may assume his or her  
 371 duties as surrogate for the principal if the original surrogate  
 372 is not willing, able, or reasonably available ~~unwilling or~~  
 373 ~~unable~~ to perform his or her duties. The principal's failure to  
 374 designate an alternate surrogate shall not invalidate the  
 375 designation of a surrogate.

376 (4) If neither the designated surrogate nor the designated  
 377 alternate surrogate is willing, able, or reasonably available  
 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  
 388 to 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 DESIGNATION OF HEALTH CARE SURROGATE

393 I, ...(name)..., designate as my health care surrogate under s.  
 394 765.202, Florida Statutes:

395  
 396 Name: ...(name of health care surrogate)...

397 Address: ...(address)...

398 Phone: ...(telephone)...

399  
 400 If my health care surrogate is not willing, able, or reasonably  
 401 available to perform his or her duties, I designate as my  
 402 alternate health care surrogate:

403  
 404 Name: ...(name of alternate health care surrogate)...

405 Address: ...(address)...

406 Phone: ...(telephone)...

407

408 INSTRUCTIONS FOR HEALTH CARE

409 I authorize my health care surrogate to:

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

412 1. Is created or received by a health care provider,  
 413 health care facility, health plan, public health authority,  
 414 employer, life insurer, school or university, or health care  
 415 clearinghouse; and

416 2. Relates to my past, present, or future physical or



417 mental health or condition; the provision of health care to me;  
418 or the past, present, or future payment for the provision of  
419 health care to me.

420 I further authorize my health care surrogate to:

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

423 1. Provide informed consent, refusal of consent, or  
424 withdrawal of consent to any and all of my health care,  
425 including life-prolonging procedures.

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

428 3. Access my health information reasonably necessary for  
429 the health care surrogate to make decisions involving my health  
430 care and to apply for benefits for me.

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

433 ...(Initial here)... Specific instructions and  
434 restrictions: .....  
435 .....  
436 .....

437  
438 To the extent I am capable of understanding, my health care  
439 surrogate shall keep me reasonably informed of all decisions  
440 that he or she has made on my behalf and matters concerning me.

441  
442 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY

443 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA  
 444 STATUTES.

445  
 446 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY  
 447 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN  
 448 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE  
 449 FOLLOWING BOXES:

450  
 451 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
 452 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT  
 453 IMMEDIATELY.

454  
 455 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
 456 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT  
 457 IMMEDIATELY.

458  
 459 SIGNATURES: Sign and date the form here:

460 ...(date)... ...(sign your name)...  
 461 ...(address)... ...(print your name)...  
 462 ...(city)... ..(state)...

463  
 464 SIGNATURES OF WITNESSES:

465 First witness Second witness  
 466 ...(print name)... ...(print name)...  
 467 ...(address)... ...(address)...  
 468 ...(city)... ..(state)... ...(city)... ..(state)...

469 ...(signature of witness)... ...(signature of witness)...

470 ...(date)... ...(date)...

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

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

476 Name:.....

477 Address:.....

478  
..... Zip Code:.....

479  
480 Phone:.....

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

483 Name:.....

484 Address:.....

485  
..... Zip Code:.....

486  
487 Phone:.....

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

493 ~~Additional instructions (optional):.....~~  
 494 ~~.....~~  
 495 ~~.....~~  
 496 ~~.....~~

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

502 ~~Name:.....~~

503 ~~Name:.....~~

504 ~~.....~~

505 ~~.....~~

506 ~~Signed:.....~~

507 ~~Date:.....~~

508

Witnesses:            1.——

509

                         2.——

510

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

513        765.2035 Designation of a health care surrogate for a  
 514 minor.—

515        (1) A natural guardian as defined in s. 744.301(1), legal  
 516 custodian, or legal guardian of the person of a minor may

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

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

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

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

541 (5) A natural guardian as defined in s. 744.301(1), legal  
542 custodian, or legal guardian of the person of a minor may

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

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

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

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

562 765.2038 Designation of health care surrogate for a minor;  
 563 suggested form.—A written designation of a health care surrogate  
 564 for a minor executed pursuant to this chapter may, but need to  
 565 be, in the following form:

566 DESIGNATION OF HEALTH CARE SURROGATE

567 FOR MINOR

568 I/We, ...(name/names)..., the [....] natural guardian(s)

569 as defined in s. 744.301(1), Florida Statutes; [....] legal  
570 custodian(s); [....] legal guardian(s) [check one] of the  
571 following minor(s):

572  
573 .....;  
574 .....;  
575 .....;

576  
577 pursuant to s. 765.2035, Florida Statutes, designate the  
578 following person to act as my/our surrogate for health care  
579 decisions for such minor(s) in the event that I/we am/are not  
580 able or reasonably available to provide consent for medical  
581 treatment and surgical and diagnostic procedures:

582  
583 Name: ... (name)...  
584 Address: ... (address)...  
585 Zip Code: ... (zip code)...  
586 Phone: ... (telephone)...

587  
588 If my/our designated health care surrogate for a minor is  
589 not willing, able, or reasonably available to perform his or her  
590 duties, I/we designate the following person as my/our alternate  
591 health care surrogate for a minor:

592  
593 Name: ... (name)...  
594 Address: ... (address)...

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

596 Phone: ...(telephone)...

597

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

605

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

612

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

616

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

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

619

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



621 Date: ... (date)...

622

623 WITNESSES:

624 1. ... (witness)...

625 2. ... (witness)...

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

628 765.204 Capacity of principal; procedure.—

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

634 (2) If a principal's capacity to make health care  
635 decisions for herself or himself or provide informed consent is  
636 in question, the primary ~~attending~~ physician shall evaluate the  
637 principal's capacity and, if the physician concludes that the  
638 principal lacks capacity, enter that evaluation in the  
639 principal's medical record. If the ~~attending~~ physician has a  
640 question as to whether the principal lacks capacity, another  
641 physician shall also evaluate the principal's capacity, and if  
642 the second physician agrees that the principal lacks the  
643 capacity to make health care decisions or provide informed  
644 consent, the health care facility shall enter both physician's  
645 evaluations in the principal's medical record. If the principal  
646 has designated a health care surrogate or has delegated

647 authority to make health care decisions to an attorney in fact  
648 under a durable power of attorney, the health care facility  
649 shall notify such surrogate or attorney in fact in writing that  
650 her or his authority under the instrument has commenced, as  
651 provided in chapter 709 or s. 765.203.

652 (3) The surrogate's authority shall commence upon a  
653 determination under subsection (2) that the principal lacks  
654 capacity, and such authority shall remain in effect until a  
655 determination that the principal has regained such capacity.  
656 Upon commencement of the surrogate's authority, a surrogate who  
657 is not the principal's spouse shall notify the principal's  
658 spouse or adult children of the principal's designation of the  
659 surrogate. In the event the primary attending physician  
660 determines that the principal has regained capacity, the  
661 authority of the surrogate shall cease, but shall recommence if  
662 the principal subsequently loses capacity as determined pursuant  
663 to this section.

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

673            (5)~~(4)~~ A determination made pursuant to this section that  
 674 a principal lacks capacity to make health care decisions shall  
 675 not be construed as a finding that a principal lacks capacity  
 676 for any other purpose.

677            (6)~~(5)~~ ~~If In the event~~ the surrogate is required to  
 678 consent to withholding or withdrawing life-prolonging  
 679 procedures, ~~the provisions of part III~~ applies ~~shall apply~~.

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

682            765.205 Responsibility of the surrogate.—

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

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

688            (2) The surrogate may authorize the release of health  
 689 information ~~and medical records~~ to appropriate persons to ensure  
 690 the continuity of the principal's health care and may authorize  
 691 the admission, discharge, or transfer of the principal to or  
 692 from a health care facility or other facility or program  
 693 licensed under chapter 400 or chapter 429.

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

696            765.302 Procedure for making a living will; notice to  
 697 physician.—

698            (2) It is the responsibility of the principal to provide

699 for notification to her or his primary ~~attending or treating~~  
 700 physician that the living will has been made. In the event the  
 701 principal is physically or mentally incapacitated at the time  
 702 the principal is admitted to a health care facility, any other  
 703 person may notify the physician or health care facility of the  
 704 existence of the living will. A primary ~~An attending or treating~~  
 705 physician or health care facility which is so notified shall  
 706 promptly make the living will or a copy thereof a part of the  
 707 principal's medical records.

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

710 765.303 Suggested form of a living will.—

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

713 Living Will

714 Declaration made this .... day of ....., ...(year)...., I,  
 715 ....., willfully and voluntarily make known my desire that my  
 716 dying not be artificially prolonged under the circumstances set  
 717 forth below, and I do hereby declare that, if at any time I am  
 718 incapacitated and

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

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

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

722 and if my primary ~~attending or treating~~ physician and another  
 723 consulting physician have determined that there is no reasonable  
 724 medical probability of my recovery from such condition, I direct

725 that life-prolonging procedures be withheld or withdrawn when  
726 the application of such procedures would serve only to prolong  
727 artificially the process of dying, and that I be permitted to  
728 die naturally with only the administration of medication or the  
729 performance of any medical procedure deemed necessary to provide  
730 me with comfort care or to alleviate pain.

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

735 In the event that I have been determined to be unable to  
736 provide express and informed consent regarding the withholding,  
737 withdrawal, or continuation of life-prolonging procedures, I  
738 wish to designate, as my surrogate to carry out the provisions  
739 of this declaration:

740 Name:.....

741 Address:.....

742 .....

Zip Code:.....

743 .....

744 Phone:.....

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

747 Additional Instructions (optional):

748 .....

749 .....

750 .....  
 751

751 ..... (Signed) .....

752 .....Witness.....

753 .....Address.....

754 .....Phone.....

755 .....Witness.....

756 .....Address.....

757 .....Phone.....

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

760 765.304 Procedure for living will.—

761 (1) If a person has made a living will expressing his or  
 762 her desires concerning life-prolonging procedures, but has not  
 763 designated a surrogate to execute his or her wishes concerning  
 764 life-prolonging procedures or designated a surrogate under part  
 765 II, the person's primary ~~attending~~ physician may proceed as  
 766 directed by the principal in the living will. In the event of a  
 767 dispute or disagreement concerning the primary ~~attending~~  
 768 physician's decision to withhold or withdraw life-prolonging  
 769 procedures, the primary ~~attending~~ physician shall not withhold  
 770 or withdraw life-prolonging procedures pending review under s.  
 771 765.105. If a review of a disputed decision is not sought within  
 772 7 days following the primary ~~attending~~ physician's decision to  
 773 withhold or withdraw life-prolonging procedures, the primary  
 774 ~~attending~~ physician may proceed in accordance with the  
 775 principal's instructions.

776 Section 17. Section 765.306, Florida Statutes, is amended  
 777 to read:

778 765.306 Determination of patient condition.—In determining  
 779 whether the patient has a terminal condition, has an end-stage  
 780 condition, or is in a persistent vegetative state or may recover  
 781 capacity, or whether a medical condition or limitation referred  
 782 to in an advance directive exists, the patient's primary  
 783 ~~attending or treating~~ physician and at least one other  
 784 consulting physician must separately examine the patient. The  
 785 findings of each such examination must be documented in the  
 786 patient's medical record and signed by each examining physician  
 787 before life-prolonging procedures may be withheld or withdrawn.

788 Section 18. Section 765.404, Florida Statutes, is amended  
 789 to read:

790 765.404 Persistent vegetative state.—For persons in a  
 791 persistent vegetative state, as determined by the person's  
 792 primary ~~attending~~ physician in accordance with currently  
 793 accepted medical standards, who have no advance directive and  
 794 for whom there is no evidence indicating what the person would  
 795 have wanted under such conditions, and for whom, after a  
 796 reasonably diligent inquiry, no family or friends are available  
 797 or willing to serve as a proxy to make health care decisions for  
 798 them, life-prolonging procedures may be withheld or withdrawn  
 799 under the following conditions:

- 800 (1) The person has a judicially appointed guardian  
 801 representing his or her best interest with authority to consent

802 to medical treatment; and

803 (2) The guardian and the person's primary ~~attending~~  
 804 physician, in consultation with the medical ethics committee of  
 805 the facility where the patient is located, conclude that the  
 806 condition is permanent and that there is no reasonable medical  
 807 probability for recovery and that withholding or withdrawing  
 808 life-prolonging procedures is in the best interest of the  
 809 patient. If there is no medical ethics committee at the  
 810 facility, the facility must have an arrangement with the medical  
 811 ethics committee of another facility or with a community-based  
 812 ethics committee approved by the Florida Bio-ethics Network. The  
 813 ethics committee shall review the case with the guardian, in  
 814 consultation with the person's primary ~~attending~~ physician, to  
 815 determine whether the condition is permanent and there is no  
 816 reasonable medical probability for recovery. The individual  
 817 committee members and the facility associated with an ethics  
 818 committee shall not be held liable in any civil action related  
 819 to the performance of any duties required in this subsection.

820 Section 19. Paragraph (c) of subsection (1) of section  
 821 765.516, Florida Statutes, is amended to read:

822 765.516 Donor amendment or revocation of anatomical gift.—

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

825 (c) A statement made during a terminal illness or injury  
 826 addressed to the primary ~~an attending~~ physician, who must  
 827 communicate the revocation of the gift to the procurement



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2015

828 | organization.

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