

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, or informed consent as
68 provided by law is required, except as provided in s. 39.407(3).

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

78 (a) A health care surrogate designated under s. 765.2035

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

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

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

93 765.101 Definitions.—As used in this chapter:

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

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

105 (3) "Close personal friend" means any person 18 years of
106 age or older who has exhibited special care and concern for the
107 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 (4) "End-stage condition" means an irreversible condition
115 that is caused by injury, disease, or illness which has resulted
116 in progressively severe and permanent deterioration, and which,
117 to a reasonable degree of medical probability, treatment of the
118 condition would be ineffective.

119 (5) "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 (6)-(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 ~~(7)-(6)~~ "Health care facility" means a hospital, nursing
 140 home, hospice, home health agency, or health maintenance
 141 organization licensed in this state, or any facility subject to
 142 part I of chapter 394.

143 ~~(8)-(7)~~ "Health care provider" or "provider" means any
 144 person 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 (9) "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 (10)-(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 (11)-(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 (12)-(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 (13)-(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 (14) "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 ~~(15)-(12)~~ "Persistent vegetative state" means a permanent
191 and irreversible condition of unconsciousness in which there is:

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

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

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

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

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

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

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

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

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

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

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

451 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN
 452 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY
 453 DIRECTION;

454 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE
 455 THIS DESIGNATION; OR

456 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
 457 FROM THIS DESIGNATION.

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

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

468 IF I INITIAL THIS BOX [...], MY HEALTH CARE SURROGATE'S

469 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
470 IMMEDIATELY.

471
472 SIGNATURES: Sign and date the form here:

473 ...(date)... ...(sign your name)...
474 ...(address)... ...(print your name)...
475 ...(city)... ..(state)...

476
477 SIGNATURES OF WITNESSES:

478 First witness Second witness
479 ...(print name)... ...(print name)...
480 ...(address)... ...(address)...
481 ...(city)... ..(state)... ...(city)... ..(state)...
482 ...(signature of witness)... ...(signature of witness)...
483 ...(date)... ...(date)...

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

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

489 Name:.....

490 Address:.....

491

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

492

493 Phone:.....

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

496 ~~Name:.....~~

497 ~~Address:.....~~

498
~~..... Zip Code:.....~~

499
500 ~~Phone:.....~~

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

506 ~~Additional instructions (optional):.....~~
507 ~~.....~~
508 ~~.....~~
509 ~~.....~~

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

515 ~~Name:.....~~

516 ~~Name:.....~~

517 ~~.....~~

518 ~~.....~~

519 Signed:.....

520 Date:.....

521

Witnesses: 1.---

522

2.---

523

524 Section 10. Section 765.2035, Florida Statutes, is created
525 to read:

526 765.2035 Designation of a health care surrogate for a
527 minor.-

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

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

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

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

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

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

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

568 (7) A written designation of a health care surrogate
569 executed pursuant to this section establishes a rebuttable
570 presumption of clear and convincing evidence of the minor's
571 principal's designation of the surrogate and becomes effective
572 pursuant to s. 743.0645(2)(a).

573 Section 11. Section 765.2038, Florida Statutes, is created
574 to read:

575 765.2038 Designation of health care surrogate for a minor;
576 suggested form.—A written designation of a health care surrogate
577 for a minor executed pursuant to this chapter may, but need to
578 be, in the following form:

579 DESIGNATION OF HEALTH CARE SURROGATE
580 FOR MINOR

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

585
586;
587;
588,

589
590 pursuant to s. 765.2035, Florida Statutes, designate the
591 following person to act as my/our surrogate for health care
592 decisions for such minor(s) in the event that I/we am/are not
593 able or reasonably available to provide consent for medical

594 treatment and surgical and diagnostic procedures:

595

596 Name: ... (name)...

597 Address: ... (address)...

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

599 Phone: ... (telephone)...

600

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

605

606 Name: ... (name)...

607 Address: ... (address)...

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

609 Phone: ... (telephone)...

610

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

618

619 I/We fully understand that this designation will permit

620 my/our designee to make health care decisions for a minor and to
 621 provide, withhold, or withdraw consent on my/our behalf, to
 622 apply for public benefits to defray the cost of health care, and
 623 to authorize the admission or transfer of a minor to or from a
 624 health care facility.

625
 626 I/We will notify and send a copy of this document to the
 627 following person(s) other than my/our surrogate, so that they
 628 may know the identity of my/our surrogate:

629
 630 Name: ... (name) ...

631 Name: ... (name) ...

632
 633 Signed: ... (signature) ...

634 Date: ... (date) ...

635
 636 WITNESSES:

637 1. ... (witness) ...

638 2. ... (witness) ...

639 Section 12. Section 765.204, Florida Statutes, is amended
 640 to read:

641 765.204 Capacity of principal; procedure.—

642 (1) A principal is presumed to be capable of making health
 643 care decisions for herself or himself unless she or he is
 644 determined to be incapacitated. Incapacity may not be inferred

645 from the person's voluntary or involuntary hospitalization for
646 mental illness or from her or his intellectual disability.

647 (2) If a principal's capacity to make health care
648 decisions for herself or himself or provide informed consent is
649 in question, the primary or attending physician shall evaluate
650 the principal's capacity and, if the evaluating physician
651 concludes that the principal lacks capacity, enter that
652 evaluation in the principal's medical record. If the evaluating
653 ~~attending~~ physician has a question as to whether the principal
654 lacks capacity, another physician shall also evaluate the
655 principal's capacity, and if the second physician agrees that
656 the principal lacks the capacity to make health care decisions
657 or provide informed consent, the health care facility shall
658 enter both physician's evaluations in the principal's medical
659 record. If the principal has designated a health care surrogate
660 or has delegated authority to make health care decisions to an
661 attorney in fact under a durable power of attorney, the health
662 care facility shall notify such surrogate or attorney in fact in
663 writing that her or his authority under the instrument has
664 commenced, as provided in chapter 709 or s. 765.203. If an
665 attending physician determines that the principal lacks
666 capacity, the hospital in which the attending physician made
667 such a determination shall notify the principal's primary
668 physician of the determination.

669 (3) The surrogate's authority shall commence upon a
670 determination under subsection (2) that the principal lacks

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

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

690 (5) ~~(4)~~ A determination made pursuant to this section that
691 a principal lacks capacity to make health care decisions shall
692 not be construed as a finding that a principal lacks capacity
693 for any other purpose.

694 (6) ~~(5)~~ ~~If In the event~~ the surrogate is required to
695 consent to withholding or withdrawing life-prolonging
696 procedures, ~~the provisions of part III~~ applies ~~shall apply.~~

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

699 765.205 Responsibility of the surrogate.—

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

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

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

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

713 765.302 Procedure for making a living will; notice to
714 physician.—

715 (2) It is the responsibility of the principal to provide
716 for notification to her or his primary ~~attending or treating~~
717 physician that the living will has been made. In the event the
718 principal is physically or mentally incapacitated at the time
719 the principal is admitted to a health care facility, any other
720 person may notify the physician or health care facility of the
721 existence of the living will. A primary ~~An attending or treating~~
722 physician or health care facility which is so notified shall

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

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

727 765.303 Suggested form of a living will.—

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

730 Living Will

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

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

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

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

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

748 It is my intention that this declaration be honored by my

749 family and physician as the final expression of my legal right
750 to refuse medical or surgical treatment and to accept the
751 consequences for such refusal.

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

757 Name:.....

758 Address:.....

759

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

760

761 Phone:.....

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

764 Additional Instructions (optional):

765

766

767

768(Signed).....

769Witness.....

770Address.....

771Phone.....

772Witness.....

773Address.....

774Phone. . . .

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

777 765.304 Procedure for living will.—

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

793 Section 17. Section 765.306, Florida Statutes, is amended
794 to read:

795 765.306 Determination of patient condition.—In determining
796 whether the patient has a terminal condition, has an end-stage
797 condition, or is in a persistent vegetative state or may recover
798 capacity, or whether a medical condition or limitation referred
799 to in an advance directive exists, the patient's primary

800 ~~attending or treating~~ physician and at least one other
801 consulting physician must separately examine the patient. The
802 findings of each such examination must be documented in the
803 patient's medical record and signed by each examining physician
804 before life-prolonging procedures may be withheld or withdrawn.

805 Section 18. Section 765.404, Florida Statutes, is amended
806 to read:

807 765.404 Persistent vegetative state.—For persons in a
808 persistent vegetative state, as determined by the person's
809 primary ~~attending~~ physician in accordance with currently
810 accepted medical standards, who have no advance directive and
811 for whom there is no evidence indicating what the person would
812 have wanted under such conditions, and for whom, after a
813 reasonably diligent inquiry, no family or friends are available
814 or willing to serve as a proxy to make health care decisions for
815 them, life-prolonging procedures may be withheld or withdrawn
816 under the following conditions:

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

820 (2) The guardian and the person's primary ~~attending~~
821 physician, in consultation with the medical ethics committee of
822 the facility where the patient is located, conclude that the
823 condition is permanent and that there is no reasonable medical
824 probability for recovery and that withholding or withdrawing
825 life-prolonging procedures is in the best interest of the

826 patient. If there is no medical ethics committee at the
827 facility, the facility must have an arrangement with the medical
828 ethics committee of another facility or with a community-based
829 ethics committee approved by the Florida Bio-ethics Network. The
830 ethics committee shall review the case with the guardian, in
831 consultation with the person's primary ~~attending~~ physician, to
832 determine whether the condition is permanent and there is no
833 reasonable medical probability for recovery. The individual
834 committee members and the facility associated with an ethics
835 committee shall not be held liable in any civil action related
836 to the performance of any duties required in this subsection.

837 Section 19. Paragraph (c) of subsection (1) of section
838 765.516, Florida Statutes, is amended to read:

839 765.516 Donor amendment or revocation of anatomical gift.—

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

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

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