

1 A bill to be entitled
2 An act relating to electronic health records; amending
3 s. 765.101, F.S.; redefining the terms "health care
4 decision" and "incapacity or incompetent"; creating s.
5 765.1140, F.S.; authorizing a person to donate his or
6 her electronic health records, subject to certain
7 requirements; authorizing electronic health records to
8 be donated to specified entities for specified
9 purposes; requiring electronic health records donated
10 by a health care surrogate to be de-identified;
11 authorizing a donor to amend the terms or revoke an
12 electronic health records donation in specified
13 matters; creating s. 765.1141, F.S.; requiring the
14 Agency for Health Care Administration and the
15 Department of Highway Safety and Motor Vehicles to
16 develop and implement a program that encourages and
17 authorizes persons to donate electronic health records
18 and qualified electronic health records as part of a
19 process of issuing and renewing identification cards
20 and driver licenses; requiring specified information
21 to be included in the donor registration card
22 distributed by the department; requiring the agency
23 and the department to develop and implement a program
24 to identify donors through notations on identification
25 cards and driver licenses; requiring the agency to

26 provide certain supplies and forms, and the department
 27 to provide a recordkeeping system; prohibiting the
 28 department and agency from incurring liability in
 29 connection with the performance of certain acts;
 30 requiring the department to maintain a link on its
 31 website referring visitors to an electronic health
 32 records repository under certain circumstances;
 33 requiring rulemaking; amending s. 765.203, F.S.;

34 revising the suggested form for designation of a
 35 health care surrogate to expand health care decision
 36 authority of the health care surrogate; providing an
 37 effective date.

38

39 Be It Enacted by the Legislature of the State of Florida:

40

41 Section 1. Paragraph (e) is added to subsection (6) of
 42 section 765.101, Florida Statutes, and subsection (10) of that
 43 section is amended, to read:

44 765.101 Definitions.—As used in this chapter:

45 (6) "Health care decision" means:

46 (e) The right of a health care surrogate or proxy to
 47 donate the principal's electronic health records and qualified
 48 electronic health records, as defined in s. 408.051, upon the
 49 principal's death to an accredited medical or dental school,
 50 college, university, hospital, or repository that collects,

51 stores, and shares de-identified electronic health records in
 52 the public domain for purposes of educating or developing
 53 diagnoses, treatment choices, policies, health care system
 54 designs, and innovations in order to improve health outcomes and
 55 reduce health care costs.

56 (10) "Incapacity" or "incompetent" means the patient is
 57 physically or mentally unable to communicate a willful and
 58 knowing health care decision. For the purposes of making an
 59 anatomical gift or donating electronic health records or
 60 qualified electronic health records, the term also includes a
 61 patient who is deceased.

62 Section 2. Section 765.1140, Florida Statutes, is created
 63 to read:

64 765.1140 Donating electronic health records and qualified
 65 electronic health records.—

66 (1) A person may donate all or part of his or her
 67 electronic health records or qualified electronic health records
 68 by doing any of the following:

69 (a) Signing an electronic health records donor card.

70 (b) Indicating an intent to donate on his or her driver
 71 license or identification card issued by the Department of
 72 Highway Safety and Motor Vehicles. Revocation, suspension,
 73 expiration, or cancellation of the driver license or
 74 identification card does not invalidate the intent to donate.

75 (c) Expressing a wish to donate in a living will or other

76 | advance directive.

77 | (d) Expressing a wish to donate in a will. The donation
 78 | becomes effective upon the death of the testator without waiting
 79 | for probate. If the will is not probated or if it is declared
 80 | invalid for testamentary purposes, the donation is nevertheless
 81 | valid to the extent that it has been acted upon in good faith.

82 | (e) Expressing a wish to donate in a document other than a
 83 | will. The document must be signed by the donor in the presence
 84 | of two adult witnesses, who must sign the document in the
 85 | donor's presence. If the donor cannot sign, the document may be
 86 | signed by another person at the donor's direction and in his or
 87 | her presence and in the presence of two witnesses, who must sign
 88 | the document in the donor's presence. Delivery of the document
 89 | during the donor's lifetime is not necessary to make the intent
 90 | to donate valid. The following form of written document is
 91 | sufficient for any person to make a donation of electronic
 92 | health records or qualified electronic health records for the
 93 | purposes of this part:

94 |
 95 | UNIFORM ELECTRONIC HEALTH RECORDS DONOR CARD
 96 |

97 | The undersigned hereby makes this health records donation to
 98 | take effect on death. The words and marks below indicate my
 99 | desires:

100 | I give:

101 (a) all electronic health records;
 102 (b) only the following electronic health records:
 103 ...[Specify the health records]...
 104 for the purpose of medical research or education.

106 Signed by the donor and the following witnesses in the presence
 107 of each other:

109 ...(Signature of donor)... ...(Date of birth of donor)...

110 ...(Date signed)... ...(City and State)...

112 ...(Witness)... ...(Witness)...

113 ...(Address)... ...(Address)...

115 (2) The de-identified electronic health records may be
 116 given to a donee that is an accredited medical or dental school,
 117 college, university, hospital, or repository for the purposes of
 118 educating or developing diagnoses, treatment choices, policies,
 119 health care system designs, and innovations to improve health
 120 outcomes and reduce health care costs. The donee may be
 121 specified by name.

122 (3) Any electronic health records donated by a health care
 123 surrogate designated by the decedent pursuant to part II of this
 124 chapter must be de-identified and such donation must be made by
 125 a document signed by that person or made by that person's

126 witnessed telephonic discussion, telegraphic message, or other
127 recorded message.

128 (4) A donor may amend the terms of or revoke a donation of
129 electronic health records by any of the following means:

130 (a) The execution and delivery to the donee of a signed
131 statement witnessed by at least two adults, one of whom is a
132 disinterested witness.

133 (b) An oral statement that is made in the presence of two
134 adult witnesses, one of whom is not a family member, and
135 communicated to the donor's family or attorney or to the donee.
136 An oral statement is effective only if the medical or dental
137 school, college, university, hospital, or repository has actual
138 notice of the oral amendment or revocation.

139 (c) An oral statement made during a terminal illness or
140 injury addressed to the primary physician, who must communicate
141 the revocation of the gift to the medical or dental school,
142 college, university, hospital, or repository.

143 (d) A signed document found on or about the donor's
144 person.

145 (e) A later-executed document of donation which amends or
146 revokes a previous health records donation or portion of a
147 health records donation, either expressly or by inconsistency.

148 (f) The destruction or cancellation, with the intent to
149 revoke the donation, of the document that indicates the intent
150 to donate or the destruction or cancellation of that portion of

151 the document which indicates the intent to donate.

152 Section 3. Section 765.1141, Florida Statutes, is created
153 to read:

154 765.1141 Electronic health records donations as part of
155 driver license or identification card process.—

156 (1) The Agency for Health Care Administration and the
157 Department of Highway Safety and Motor Vehicles shall develop
158 and implement a program encouraging and authorizing persons to
159 donate electronic health records and qualified electronic health
160 records, as defined in s. 408.051, as a part of the process of
161 issuing and renewing identification cards and driver licenses.
162 The donor registration card distributed by the department must
163 include the information and signatures required in the uniform
164 electronic health records donor card under s. 765.1140(1)(e) and
165 such additional information as determined necessary by the
166 department. The department shall also develop and implement a
167 program to identify donors which includes notations on
168 identification cards and driver licenses to clearly indicate the
169 individual's intent to donate his or her electronic health
170 records. The agency shall provide the necessary supplies and
171 forms using appropriated funds or contributions from interested
172 voluntary, nonprofit organizations. The department shall provide
173 the necessary recordkeeping system using appropriated funds. The
174 department and the agency may not incur liability in connection
175 with the performance of any act authorized in this section.

176 (2) The department shall maintain an integrated link on
 177 its website referring a visitor renewing an identification card
 178 or a driver license or conducting other business to an
 179 electronic health records repository, if available.

180 (3) The department, after consultation with and
 181 concurrence by the agency, shall adopt rules to implement this
 182 section pursuant to chapter 120.

183 Section 4. Section 765.203, Florida Statutes, is amended
 184 to read:

185 765.203 Suggested form of designation.—A written
 186 designation of a health care surrogate executed pursuant to this
 187 chapter may, but need not be, in the following form:

188
 189 DESIGNATION OF HEALTH CARE SURROGATE

190
 191 I, ...(name)..., designate as my health care surrogate under s.
 192 765.202, Florida Statutes:

193
 194 Name: ...(name of health care surrogate)...

195 Address: ...(address)...

196 Phone: ...(telephone)...

197
 198 If my health care surrogate is not willing, able, or reasonably
 199 available to perform his or her duties, I designate as my
 200 alternate health care surrogate:

201
 202 Name: ...(name of alternate health care surrogate)...
 203 Address: ...(address)...
 204 Phone: ...(telephone)...

205
 206 INSTRUCTIONS FOR HEALTH CARE

207
 208 I authorize my health care surrogate to:
 209 ...(Initial here)... Receive any of my health information,
 210 whether oral or recorded in any form or medium, that:

211 1. Is created or received by a health care provider,
 212 health care facility, health plan, public health authority,
 213 employer, life insurer, school or university, or health care
 214 clearinghouse; and

215 2. Relates to my past, present, or future physical or
 216 mental health or condition; the provision of health care to me;
 217 or the past, present, or future payment for the provision of
 218 health care to me.

219 I further authorize my health care surrogate to:

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

222 1. Provide informed consent, refusal of consent, or
 223 withdrawal of consent to any and all of my health care,
 224 including life-prolonging procedures.

225 2. Apply on my behalf for private, public, government, or

226 veterans' benefits to defray the cost of health care.

227 3. Access my health information reasonably necessary for
228 the health care surrogate to make decisions involving my health
229 care and to apply for benefits for me.

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

232 5. Donate my electronic health records and qualified
233 electronic health records, as defined in s. 408.051, Florida
234 Statutes, to a repository to share my de-identified health
235 records for purposes of developing diagnoses, treatment choices,
236 policies, health care system designs, and innovations to improve
237 health outcomes and reduce health care costs.

238 ... (Initial here)... Specific instructions and
239 restrictions:
240
241

242 While I have decisionmaking capacity, my wishes are controlling
243 and my physicians and health care providers must clearly
244 communicate to me the treatment plan or any change to the
245 treatment plan prior to its implementation.

246
247 To the extent I am capable of understanding, my health care
248 surrogate shall keep me reasonably informed of all decisions
249 that he or she has made on my behalf and matters concerning me.

250

251 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY
 252 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA
 253 STATUTES.

254
 255 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT
 256 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND
 257 THIS DESIGNATION BY:

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

260 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN
 261 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY
 262 DIRECTION;

263 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE
 264 THIS DESIGNATION; OR

265 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
 266 FROM THIS DESIGNATION.

267
 268 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
 269 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
 270 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
 271 FOLLOWING BOXES:

272
 273 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 274 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
 275 IMMEDIATELY.

276
277 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
278 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
279 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,
280 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER
281 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERSEDE
282 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE
283 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

284
285 SIGNATURES: Sign and date the form here:
286 ... (date) ... (sign your name) ...
287 ... (address) ... (print your name) ...
288 ... (city) ... (state) ...

289
290 SIGNATURES OF WITNESSES:
291 First witness Second witness
292 ... (print name) ... (print name) ...
293 ... (address) ... (address) ...
294 ... (city) ... (state) ... (city) ... (state) ...
295 ... (signature of witness) ... (signature of witness) ...
296 ... (date) ... (date) ...

297 Section 5. This act shall take effect July 1, 2017.

298