



747152

576-04079-17

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to electronic health records; amending s. 765.101, F.S.; redefining the terms "health care decision" and "incapacity" or "incompetent"; creating s. 765.114, F.S.; authorizing a person to donate his or her electronic health records, subject to certain requirements; authorizing electronic health records and qualified electronic health records to be donated to specified entities for specified purposes; providing a form for a uniform donor card; requiring electronic health records and qualified electronic health records donated by a health care surrogate or proxy to be de-identified; authorizing electronic health records and qualified electronic health records to contain a donor's identifying information under certain conditions; authorizing a donor to amend the terms or revoke an electronic health records donation in specified manners; creating s. 765.1141, F.S.; requiring the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles to develop and implement a program that encourages and authorizes persons to donate electronic health records and qualified electronic health records as part of a process of issuing and renewing identification cards and driver licenses; requiring specified information to be included in the donor registration card distributed by the department;



747152

576-04079-17

28 requiring the agency and the department to develop and  
29 implement a program to identify donors through  
30 notations on identification cards and driver licenses;  
31 requiring the agency to provide certain supplies and  
32 forms, and the department to provide a recordkeeping  
33 system; prohibiting the department and agency from  
34 incurring liability in connection with the performance  
35 of certain acts; requiring the department to maintain  
36 a link on its website referring visitors to an  
37 electronic health records repository under certain  
38 circumstances; requiring rulemaking; amending s.  
39 765.203, F.S.; revising the suggested form for  
40 designation of a health care surrogate to expand  
41 health care decision authority of the health care  
42 surrogate; directing the Office of Program Policy  
43 Analysis and Government Accountability (OPPAGA) to  
44 conduct a study of current federal and state efforts  
45 on, and available opportunities for, the collecting,  
46 sharing, and donating certain electronic health  
47 records for the advancement of medical science;  
48 requiring OPPAGA to identify available options  
49 regarding databases or repositories; directing OPPAGA  
50 to identify any existing state or federal legislation  
51 or programs that allow such donations and identify the  
52 benefits of, and barriers to, establishing such  
53 programs in the state; requiring OPPAGA to report its  
54 findings and recommendations to the Legislature by a  
55 specified date; providing an effective date.

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747152

576-04079-17

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

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

62 765.101 Definitions.—As used in this chapter:

63 (6) "Health care decision" means:

64 (e) The right of a health care surrogate or proxy to donate  
65 the principal's electronic health records and qualified  
66 electronic health records, as defined in s. 408.051, upon the  
67 principal's death to an approved medical or dental school,  
68 college, university, hospital, or repository that collects,  
69 stores, and shares de-identified electronic health records in  
70 the public domain for purposes of educating or developing  
71 diagnoses, treatment choices, policies, health care system  
72 designs, and innovations in order to improve health outcomes and  
73 reduce health care costs. For purposes of this paragraph, the  
74 term "approved" means approved by the Department of Health.

75 (10) "Incapacity" or "incompetent" means the patient is  
76 physically or mentally unable to communicate a willful and  
77 knowing health care decision. For the purposes of making an  
78 anatomical gift or donating electronic health records or  
79 qualified electronic health records, the term also includes a  
80 patient who is deceased.

81 Section 2. Section 765.114, Florida Statutes, is created to  
82 read:

83 765.114 Donating electronic health records and qualified  
84 electronic health records.—

85 (1) A person may donate all or part of his or her



747152

576-04079-17

86 electronic health records or qualified electronic health records  
87 by doing any of the following:

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

89 (b) Indicating an intent to donate on his or her driver  
90 license or identification card issued by the Department of  
91 Highway Safety and Motor Vehicles. Revocation, suspension,  
92 expiration, or cancellation of the driver license or  
93 identification card does not invalidate the intent to donate.

94 (c) Expressing a wish to donate in a living will or other  
95 advance directive.

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

101 (e) Expressing a wish to donate in a document other than a  
102 will. The document must be signed by the donor in the presence  
103 of two adult witnesses, who must sign the document in the  
104 donor's presence. If the donor cannot sign, the document may be  
105 signed by another person at the donor's direction and in his or  
106 her presence and in the presence of two witnesses, who must sign  
107 the document in the donor's presence. Delivery of the document  
108 during the donor's lifetime is not necessary to make the intent  
109 to donate valid. The following form of written document is  
110 sufficient for any person to make a donation of electronic  
111 health records or qualified electronic health records for the  
112 purposes of this part:

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UNIFORM ELECTRONIC HEALTH RECORDS DONOR CARD



747152

576-04079-17

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

I give:

1. .... all electronic health records;

2. .... only the following electronic health records:

...[Specify the health records]...

for the purpose of medical research or education.

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

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

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

...(Witness)...    ...(Witness)...

...(Address)...    ...(Address)...

(2) The de-identified electronic health records or qualified electronic health records may be given to one or more donees that are accredited medical or dental schools, colleges, universities, hospitals, or repositories for the purposes of educating or developing diagnoses, treatment choices, policies, health care system designs, and innovations to improve health outcomes and reduce health care costs. Electronic health records or qualified electronic health records with a donor's identifying information may be given to a donee upon written consent of the donor. The donees must be approved by the



747152

576-04079-17

144 Department of Health and may be specified by name.

145 (3) Any electronic health records or qualified electronic  
146 health records donated by a health care surrogate or proxy  
147 designated by the decedent pursuant to part II of this chapter  
148 must be de-identified, unless the donee provides written consent  
149 stating that his or her identifying information may be included  
150 with such records, and such donation must be made by a document  
151 signed by that person or made by that person's witnessed  
152 telephonic discussion, telegraphic message, or other recorded  
153 message.

154 (4) A donor may amend the terms of or revoke a donation of  
155 electronic health records or qualified electronic health records  
156 by any of the following means:

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

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

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

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

171 (e) A later-executed document of donation which amends or  
172 revokes a previous health records donation or portion of a



747152

576-04079-17

173 health records donation, either expressly or by inconsistency.

174 (f) The destruction or cancellation, with the intent to  
175 revoke the donation, of the document that indicates the intent  
176 to donate or the destruction or cancellation of that portion of  
177 the document which indicates the intent to donate.

178 Section 3. Section 765.1141, Florida Statutes, is created  
179 to read:

180 765.1141 Electronic health records donations as part of  
181 driver license or identification card process.—

182 (1) The Agency for Health Care Administration and the  
183 Department of Highway Safety and Motor Vehicles shall develop  
184 and implement a program encouraging and authorizing persons to  
185 donate electronic health records and qualified electronic health  
186 records, as defined in s. 408.051, as a part of the process of  
187 issuing and renewing identification cards and driver licenses.  
188 The donor registration card distributed by the department must  
189 include the information and signatures required in the uniform  
190 electronic health records donor card under s. 765.114(1)(e) and  
191 such additional information as determined necessary by the  
192 department. The department shall also develop and implement a  
193 program to identify donors which includes notations on  
194 identification cards and driver licenses to clearly indicate the  
195 individual's intent to donate his or her electronic health  
196 records. The agency shall provide the necessary supplies and  
197 forms using appropriated funds or contributions from interested  
198 voluntary, nonprofit organizations. The department shall provide  
199 the necessary recordkeeping system using appropriated funds. The  
200 department and the agency do not incur liability in connection  
201 with the performance of any act authorized in this section.



747152

576-04079-17

202       (2) The department shall maintain an integrated link on its  
203 website referring a visitor renewing an identification card or a  
204 driver license or conducting other business to an electronic  
205 health records repository if available.

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

209       Section 4. Section 765.203, Florida Statutes, is amended to  
210 read:

211       765.203 Suggested form of designation.—A written  
212 designation of a health care surrogate executed pursuant to this  
213 chapter may, but need not be, in the following form:

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215                               DESIGNATION OF HEALTH CARE SURROGATE

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217 I, ...(name)..., designate as my health care surrogate under s.  
218 765.202, Florida Statutes:

219

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

221 Address: ...(address)...

222 Phone: ...(telephone)...

223

224 If my health care surrogate is not willing, able, or reasonably  
225 available to perform his or her duties, I designate as my  
226 alternate health care surrogate:

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

229 Address: ...(address)...

230 Phone: ...(telephone)...





747152

576-04079-17

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INSTRUCTIONS FOR HEALTH CARE

I authorize my health care surrogate to:

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

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

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

I further authorize my health care surrogate to:

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

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

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

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

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

5. Donate my electronic health records and qualified electronic health records, as defined in s. 408.051, Florida



747152

576-04079-17

260 Statutes, to one or more accredited medical or dental schools,  
261 colleges, universities, hospitals, or repositories, approved by  
262 the Department of Health, to share my de-identified health  
263 records for purposes of developing diagnoses, treatment choices,  
264 policies, health care system designs, and innovations to improve  
265 health outcomes and reduce health care costs.

266       ... (Initial here)... Specific instructions and  
267 restrictions: .....  
268 .....  
269 .....

270  
271 While I have decisionmaking capacity, my wishes are controlling  
272 and my physicians and health care providers must clearly  
273 communicate to me the treatment plan or any change to the  
274 treatment plan prior to its implementation.

275  
276 To the extent I am capable of understanding, my health care  
277 surrogate shall keep me reasonably informed of all decisions  
278 that he or she has made on my behalf and matters concerning me.

279  
280 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY  
281 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA  
282 STATUTES.

283  
284 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT  
285 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND  
286 THIS DESIGNATION BY:

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



747152

576-04079-17

289 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN  
290 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY  
291 DIRECTION;

292 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE  
293 THIS DESIGNATION; OR

294 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT  
295 FROM THIS DESIGNATION.

296

297 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY  
298 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN  
299 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE  
300 FOLLOWING BOXES:

301

302 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
303 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT  
304 IMMEDIATELY.

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306 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
307 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT  
308 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,  
309 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER  
310 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERSEDE  
311 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE  
312 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

313

314 SIGNATURES: Sign and date the form here:

315 ... (date) ... (sign your name) ...

316 ... (address) ... (print your name) ...

317 ... (city) ... (state) ...



747152

576-04079-17

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SIGNATURES OF WITNESSES:

First witness	Second witness
...(print name)...	...(print name)...
...(address)...	...(address)...
...(city)... ..(state)...	...(city)... ..(state)...
...(signature of witness)...	...(signature of witness)...
...(date)...	...(date)...

Section 5. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study of current federal and state efforts on, and available opportunities for, the collecting, sharing, and donating of electronic health records before or after a patient's death for the advancement of medical science. OPPAGA shall identify available options regarding databases or repositories that will allow for the collection and distribution of donated electronic health records for the purpose of advancing the current state of medicine, including any existing public or private databases or repositories and any available opportunities for public or private funding to establish such a database or repository. OPPAGA shall also study the donation of electronic health records to identify any existing state or federal legislation or programs that allow such donations and to identify the benefits of, and barriers to, establishing such programs in the state of Florida. OPPAGA shall report its findings and recommendations for an electronic health records donation process to the President of the Senate and the Speaker of the House of Representatives no later than December 1, 2017.

Section 6. This act shall take effect July 1, 2017.