

By the Committee on Health Policy; and Senator Brandes

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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  
5       s. 765.114, F.S.; authorizing a person to donate his  
6       or her electronic health records, subject to certain  
7       requirements; authorizing electronic health records  
8       and qualified electronic health records to be donated  
9       to specified entities for specified purposes;  
10      providing a form for a uniform donor card; requiring  
11      electronic health records and qualified electronic  
12      health records donated by a health care surrogate or  
13      proxy to be de-identified; authorizing electronic  
14      health records and qualified electronic health records  
15      to contain a donor's identifying information under  
16      certain conditions; authorizing a donor to amend the  
17      terms or revoke an electronic health records donation  
18      in specified manners; creating s. 765.1141, F.S.;  
19      requiring the Agency for Health Care Administration  
20      and the Department of Highway Safety and Motor  
21      Vehicles to develop and implement a program that  
22      encourages and authorizes persons to donate electronic  
23      health records and qualified electronic health records  
24      as part of a process of issuing and renewing  
25      identification cards and driver licenses; requiring  
26      specified information to be included in the donor  
27      registration card distributed by the department;  
28      requiring the agency and the department to develop and  
29      implement a program to identify donors through

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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; providing an effective date.

43  
44 Be It Enacted by the Legislature of the State of Florida:

45  
46 Section 1. Paragraph (e) is added to subsection (6) of  
47 section 765.101, Florida Statutes, and subsection (10) of that  
48 section is amended, to read:

49 765.101 Definitions.—As used in this chapter:

50 (6) "Health care decision" means:

51 (e) The right of a health care surrogate or proxy to donate  
52 the principal's electronic health records and qualified  
53 electronic health records, as defined in s. 408.051, upon the  
54 principal's death to an approved medical or dental school,  
55 college, university, hospital, or repository that collects,  
56 stores, and shares de-identified electronic health records in  
57 the public domain for purposes of educating or developing  
58 diagnoses, treatment choices, policies, health care system

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59 designs, and innovations in order to improve health outcomes and  
60 reduce health care costs. For purposes of this paragraph, the  
61 term "approved" means approved by the Department of Health.

62 (10) "Incapacity" or "incompetent" means the patient is  
63 physically or mentally unable to communicate a willful and  
64 knowing health care decision. For the purposes of making an  
65 anatomical gift or donating electronic health records or  
66 qualified electronic health records, the term also includes a  
67 patient who is deceased.

68 Section 2. Section 765.114, Florida Statutes, is created to  
69 read:

70 765.114 Donating electronic health records and qualified  
71 electronic health records.-

72 (1) A person may donate all or part of his or her  
73 electronic health records or qualified electronic health records  
74 by doing any of the following:

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

76 (b) Indicating an intent to donate on his or her driver  
77 license or identification card issued by the Department of  
78 Highway Safety and Motor Vehicles. Revocation, suspension,  
79 expiration, or cancellation of the driver license or  
80 identification card does not invalidate the intent to donate.

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

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

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

101                   UNIFORM ELECTRONIC HEALTH RECORDS DONOR CARD

102  
 103 The undersigned hereby makes this health records donation, to  
 104 take effect on death. The words and marks below indicate my  
 105 desires:

106 I give:

- 107       1. .... all electronic health records;
- 108       2. .... only the following electronic health records:  
       ...[Specify the health records]...

110 for the purpose of medical research or education.

111  
 112 Signed by the donor and the following witnesses in the presence  
 113 of each other:

114  
 115 ...(Signature of donor)...                   ...(Date of birth of donor)...  
 116 ...(Date signed)...                               ...(City and State)...

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117  
118 ...(Witness)... ...(Witness)...  
119 ...(Address)... ...(Address)...  
120

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

132 (3) Any electronic health records or qualified electronic  
133 health records donated by a health care surrogate or proxy  
134 designated by the decedent pursuant to part II of this chapter  
135 must be de-identified, unless the donee provides written consent  
136 stating that his or her identifying information may be included  
137 with such records, and such donation must be made by a document  
138 signed by that person or made by that person's witnessed  
139 telephonic discussion, telegraphic message, or other recorded  
140 message.

141 (4) A donor may amend the terms of or revoke a donation of  
142 electronic health records or qualified electronic health records  
143 by any of the following means:

144 (a) The execution and delivery to the donee of a signed  
145 statement witnessed by at least two adults, one of whom is a

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146 disinterested witness.

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

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

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

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

161 (f) The destruction or cancellation, with the intent to  
162 revoke the donation, of the document that indicates the intent  
163 to donate or the destruction or cancellation of that portion of  
164 the document which indicates the intent to donate.

165 Section 3. Section 765.1141, Florida Statutes, is created  
166 to read:

167 765.1141 Electronic health records donations as part of  
168 driver license or identification card process.—

169 (1) The Agency for Health Care Administration and the  
170 Department of Highway Safety and Motor Vehicles shall develop  
171 and implement a program encouraging and authorizing persons to  
172 donate electronic health records and qualified electronic health  
173 records, as defined in s. 408.051, as a part of the process of  
174 issuing and renewing identification cards and driver licenses.

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175 The donor registration card distributed by the department must  
176 include the information and signatures required in the uniform  
177 electronic health records donor card under s. 765.114(1)(e) and  
178 such additional information as determined necessary by the  
179 department. The department shall also develop and implement a  
180 program to identify donors which includes notations on  
181 identification cards and driver licenses to clearly indicate the  
182 individual's intent to donate his or her electronic health  
183 records. The agency shall provide the necessary supplies and  
184 forms using appropriated funds or contributions from interested  
185 voluntary, nonprofit organizations. The department shall provide  
186 the necessary recordkeeping system using appropriated funds. The  
187 department and the agency do not incur liability in connection  
188 with the performance of any act authorized in this section.

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

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

196 Section 4. Section 765.203, Florida Statutes, is amended to  
197 read:

198 765.203 Suggested form of designation.—A written  
199 designation of a health care surrogate executed pursuant to this  
200 chapter may, but need not be, in the following form:

201

202 DESIGNATION OF HEALTH CARE SURROGATE

203

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204 I, ...(name)..., designate as my health care surrogate under s.  
 205 765.202, Florida Statutes:

206

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

208 Address: ...(address)...

209 Phone: ...(telephone)...

210

211 If my health care surrogate is not willing, able, or reasonably  
 212 available to perform his or her duties, I designate as my  
 213 alternate health care surrogate:

214

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

216 Address: ...(address)...

217 Phone: ...(telephone)...

218

219 INSTRUCTIONS FOR HEALTH CARE

220

221 I authorize my health care surrogate to:

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

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

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

232 I further authorize my health care surrogate to:



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

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

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

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

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

245           5. Donate my electronic health records and qualified  
246 electronic health records, as defined in s. 408.051, Florida  
247 Statutes, to one or more accredited medical or dental schools,  
248 colleges, universities, hospitals, or repositories, approved by  
249 the Department of Health, to share my de-identified health  
250 records for purposes of developing diagnoses, treatment choices,  
251 policies, health care system designs, and innovations to improve  
252 health outcomes and reduce health care costs.

253           ...(Initial here)... Specific instructions and  
254 restrictions: .....  
255 .....  
256 .....

257  
258 While I have decisionmaking capacity, my wishes are controlling  
259 and my physicians and health care providers must clearly  
260 communicate to me the treatment plan or any change to the  
261 treatment plan prior to its implementation.

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

266

267 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY  
268 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA  
269 STATUTES.

270

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

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

276 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN  
277 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY  
278 DIRECTION;

279 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE  
280 THIS DESIGNATION; OR

281 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT  
282 FROM THIS DESIGNATION.

283

284 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY  
285 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN  
286 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE  
287 FOLLOWING BOXES:

288

289 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
290 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT

