Senate Appropriations Subcommittee on Health and Human Services (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (l) of subsection (3) of section 395.1041, Florida Statutes, is amended to read:

395.1041 Access to emergency services and care.—

(3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF FACILITY OR HEALTH CARE PERSONNEL.—

(l) Hospital personnel may withhold or withdraw
cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a physician order for life-sustaining treatment (POLST) form executed pursuant to s. 401.451 which contains an order not to resuscitate. Facility staff and facilities are not subject to criminal prosecution or civil liability, and are not considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order or POLST form. The absence of an order not to resuscitate executed pursuant to s. 401.45 or a POLST form executed pursuant to s. 401.451 which contains an order not to resuscitate does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise authorized by law.

Section 2. Subsection (3) of section 400.142, Florida Statutes, is amended to read:

400.142 Emergency medication kits; orders not to resuscitate.—

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a physician order for life-sustaining treatment (POLST) form executed pursuant to s. 401.451 that contains an order not to resuscitate. Facility staff and facilities are not subject to criminal prosecution or civil liability, or considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order or POLST form. The absence of an order not to resuscitate executed pursuant to s. 401.45 or a POLST form executed pursuant to s.
401.451 which contains an order not to resuscitate does not
preclude a physician from withholding or withdrawing
cardiopulmonary resuscitation as otherwise authorized by law.

Section 3. Subsection (7) of section 400.487, Florida
Statutes, is amended to read:

400.487 Home health service agreements; physician’s,
physician assistant’s, and advanced registered nurse
practitioner’s treatment orders; patient assessment;
establishment and review of plan of care; provision of services;
orders not to resuscitate; physician orders for life-sustaining
treatment.—

(7) Home health agency personnel may withhold or withdraw
cardiopulmonary resuscitation if presented with an order not to
resuscitate executed pursuant to s. 401.45 or a physician order
for life-sustaining treatment (POLST) form executed pursuant to
s. 401.451 which contains an order not to resuscitate. The
agency shall adopt rules providing for the implementation of
such orders. Home health personnel and agencies are not subject to criminal prosecution or civil liability, and are not
considered to have engaged in negligent or unprofessional
conduct, for withholding or withdrawing cardiopulmonary
resuscitation pursuant to such an order or POLST form and rules
adopted by the agency.

Section 4. Paragraph (e) of subsection (1) of section
400.605, Florida Statutes, is amended to read:

400.605 Administration; forms; fees; rules; inspections;
fines.—

(1) The agency, in consultation with the department, may
adopt rules to administer the requirements of part II of chapter 408. The department, in consultation with the agency, shall by rule establish minimum standards and procedures for a hospice pursuant to this part. The rules must include:

- (e) Procedures relating to the implementation of advance directives; physician order for life-sustaining treatment (POLST) forms executed pursuant to s. 401.451 which contain orders not to resuscitate; and orders not to resuscitate do-not-resuscitate orders.

Section 5. Subsection (8) of section 400.6095, Florida Statutes, is amended to read:

400.6095 Patient admission; assessment; plan of care; discharge; death.—

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a physician order for life-sustaining treatment (POLST) form executed pursuant to s. 401.451 which contains an order not to resuscitate. The department shall adopt rules providing for the implementation of such orders. Hospice staff are not subject to criminal prosecution or civil liability, and are not considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order or POLST form and applicable rules. The absence of an order to resuscitate executed pursuant to s. 401.45 or a POLST form executed pursuant to s. 401.451 which contains an order not to resuscitate does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise authorized by law.
Section 6. Subsection (4) of section 401.35, Florida Statutes, is amended to read:

401.35 Rules.—The department shall adopt rules, including definitions of terms, necessary to carry out the purposes of this part.

(4) The rules must establish circumstances and procedures under which emergency medical technicians and paramedics may honor orders by the patient’s physician not to resuscitate executed pursuant to s. 401.45 or physician order for life-sustaining treatment (POLST) forms executed pursuant to s. 401.451 that contain orders not to resuscitate and the documentation and reporting requirements for handling such requests.

Section 7. Paragraph (a) of subsection (3) of section 401.45, Florida Statutes, is amended to read:

401.45 Denial of emergency treatment; civil liability.—

(3)(a) Resuscitation or other forms of medical intervention may be withheld or withdrawn from a patient by an emergency medical technician, paramedic, or other health care professional if evidence of an order not to resuscitate by the patient’s physician or a physician order for life-sustaining treatment (POLST) form executed pursuant to s. 401.451 which contains an order not to resuscitate is presented to the emergency medical technician, paramedic, or other health care professional. To be valid, an order not to resuscitate or not to perform other medical intervention, to be valid, must be on the form adopted by rule of the department. The form must be signed by the patient’s physician and by the patient or, if the patient is incapacitated, the patient’s health care surrogate or proxy
as provided in chapter 765, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709 or, if the patient is a minor, the patient’s parent or legal guardian. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 8. Section 401.451, Florida Statutes, is created to read:

401.451 Physician Order for Life-Sustaining Treatment Program.—

(1) POLST FORM.—A physician order for life-sustaining treatment (POLST) must be on the form adopted by rule of the department which must include the requirements specified in this section and must be executed as required by this section.

(a) A POLST form may only be completed by or for a patient determined by the patient’s physician to have an end-stage condition as defined in s. 765.101(4) or a patient who, in the good faith clinical judgment of her or his physician, is suffering from at least one terminal medical condition that will likely result in the death of the patient within 1 year.

(b) A POLST form must be signed by the patient’s physician. The form must contain a certification by the physician signing the POLST form that the physician consulted with the patient signing the form, or if the patient is incapable of making health care decisions for herself or himself or is incapacitated, with the patient’s health care surrogate, proxy, court-appointed guardian or attorney-in-fact authorized to execute a POLST form on behalf of the patient as provided in
paragraph (c), and must include information about the patient’s care goals and preferences as reflected on the POLST form, specifically including the use of and the effect of removal or refusal of life-sustaining medical treatment. The physician signing the POLST form must further indicate the medical circumstance justifying the execution of the POLST.

(c) A POLST form must also be signed by the patient, or if the patient is incapable of making health care decisions for herself or himself or is incapacitated, by the patient’s health care surrogate or proxy as provided in chapter 765, or if none exists, by the patient’s court-appointed guardian if the guardian has such authority as provided in chapter 744, or if none exists, by the patient’s attorney-in-fact if the patient has delegated the power to make all health care decisions to the attorney-in-fact as provided in chapter 709. If a POLST form is signed by a health care surrogate, proxy, court-appointed guardian, or attorney-in-fact, the patient’s physician must certify the basis for the authority of the appropriate individual to execute the POLST form on behalf of the patient including compliance with chapter 765, chapter 744, or chapter 709.

(d) The execution of a POLST form by the patient automatically revokes all POLST forms previously executed by the patient.

(e) A patient’s health care surrogate, proxy, court appointed guardian, or attorney-in-fact authorized to execute a POLST form on behalf of the patient as provided in paragraph (c) may subsequently revoke a POLST form for a patient, unless a valid advance directive or prior POLST form executed by the
patient expressly forbids changes by a surrogate, proxy, guardian, or attorney-in-fact.

(f) An individual acting in good faith as a surrogate, proxy, court-appointed guardian, or attorney-in-fact who executes a POLST form on behalf of an incapacitated patient or a minor patient in accordance with this section and rules adopted by the department is not subject to criminal prosecution or civil liability for executing the POLST form.

(g) If a family member of the patient, the health care facility providing services to the patient, or the patient’s physician, who may reasonably be expected to be affected by the patient’s POLST form directives, believes that directives executed by the patient’s legal representative are in conflict with the patient’s prior expressed desires regarding end-of-life care, the family member, facility, or physician may seek expedited judicial intervention pursuant to the Florida Probate Rules if that person believes:

1. The POLST form regarding the patient’s wishes regarding life-sustaining treatment is ambiguous or the patient has changed her or his mind after execution of the advance directive or POLST form;

2. The POLST form was executed by a surrogate, proxy, court-appointed guardian, or attorney-in-fact authorized to execute a POLST form on behalf of a patient as provided in paragraph (c) and the POLST form is not in accord with the patient’s known desires or chapter 765, chapter 744, or chapter 709;

3. The POLST was executed by a surrogate, proxy, court-appointed guardian, or attorney-in-fact on behalf of a patient
as provided in paragraph (c) and the surrogate, proxy, court-appointed guardian, or attorney-in-fact was improperly designated or appointed, or the designation of the surrogate, proxy, court-appointed guardian, or attorney-in-fact is no longer effective or has been removed;

4. The surrogate, proxy, court-appointed guardian, or attorney-in-fact who executed the POLST form on behalf of the patient as provided in paragraph (c) has failed to discharge her or his duties, or incapacity or illness renders her or him incapable of discharging those duties;

5. The POLST was executed by surrogate, proxy, court-appointed guardian, or attorney-in-fact authorized to execute a POLST form on behalf of a patient as provided in paragraph (c) who has abused her or his powers; or

6. The patient has sufficient capacity to make her or his own health care decisions.

(h) A POLST form may not include a directive regarding hydration or the preselection of any decision or directive. A POLST form must be voluntarily executed by the patient or, if the patient is incapacitated or a minor, the patient’s legal representative, and all directives included in the form must be made by the patient or, if the patient is incapacitated or a minor, the patient’s legal representative, at the time of signing the form. A POLST form is not valid and may not be included in a patient’s medical records or submitted to the clearinghouse unless the form:

1. Is clearly printed on one or both sides of a single piece of paper as determined by department rule;

2. Includes the signatures of the patient and the patient’s
examining physician or, if the patient is incapacitated or a
minor, the signatures of the patient’s legal representative and
the patient’s examining physician. The POLST form may be
executed only after the examining physician consults with the
patient or the patient’s legal representative, as appropriate;

3. Prominently states that completion of a POLST form is
voluntary, that the execution or use of a POLST form may not be
required as a condition for medical treatment, and that a POLST
form may not be given effect if the patient is conscious and
competent to make health care decisions;

4. Prominently provides in a conspicuous location on the
form a space for the patient’s examining physician to attest
that, in her or his clinical judgment and with good faith at the
time the POLST form is completed and signed, the patient has the
ability to make and communicate health care decisions or, if the
patient is incapacitated or a minor, that the patient’s legal
representative has such ability;

5. Includes an expiration date, provided by the patient’s
examining physician, that is within 1 year after the patient or
the patient’s legal representative signs the form or that is
contingent on completion of the course of treatment addressed in
the POLST form, whichever occurs first; and

6. Identifies the medical condition or conditions, provided
by the patient’s examining physician, that necessitate the POLST
form.

(2) DUTIES OF THE DEPARTMENT.—The department shall:

(a) Adopt rules to implement and administer the POLST
program.

(b) Prescribe a standardized POLST form.
(c) Provide the POLST form in an electronic format on the department’s website and prominently state on the website the requirements for a POLST form as specified in this section.

(d) Consult with health care professional licensing groups, provider advocacy groups, medical ethicists, and other appropriate stakeholders on the development of rules and forms to implement and administer the POLST program.

(e) Recommend a uniform method of identifying persons who have executed a POLST form and provide health care providers with contact information regarding a patient's primary health care provider.

(f) Oversee the education of health care providers licensed by the department regarding implementation of the POLST program.

(g) Develop a process for collecting provider feedback to enable periodic redesign of the POLST form in accordance with current health care best practices.

(3) DUTY TO COMPLY WITH POLST; OUT-OF-STATE POLST; LIMITED IMMUNITY.—

(a) Emergency medical service personnel, health care providers, physicians, and health care facilities, absent actual notice of revocation or termination of a POLST form, may comply with the orders on a person’s POLST form without regard to whether the POLST-ordering provider is on the medical staff of the treating health care facility. If the POLST-ordering provider is not on the medical staff of the treating health care facility, the POLST form must be reviewed by the treating health care professional at the receiving facility with the patient, or the patient’s health care surrogate, proxy, court-appointed guardian, or attorney-in-fact authorized to execute a POLST form.
(b) A POLST form from another state, absent actual notice of revocation or termination, shall be presumed to be valid and shall be effective in this state and shall have the same burden of compliance as a POLST form executed in this state.

(c) Any licensee, physician, medical director, or emergency medical technician or paramedic who acts in good faith on a POLST is not subject to criminal prosecution or civil liability and has not engaged in negligent or unprofessional conduct as a result of carrying out the directives of the POLST made in accordance with this section and rules adopted by the department.

(4) PATIENT TRANSFER; POLST FORM REVIEW REQUIRED.—If a patient whose goals and preferences for care have been entered in a valid POLST form is transferred from one health care facility or level of care to another, the health care facility initiating the transfer must communicate the existence of the POLST form to the receiving facility before the transfer. Upon the patient’s transfer, the treating health care provider at the receiving facility must review the POLST form with the patient or, if the patient is incapacitated or a minor, the patient’s health care surrogate, proxy, court-appointed guardian, or attorney-in-fact.

(5) CONFLICTS WITH ADVANCE DIRECTIVES.—To the extent that a directive made on a patient’s POLST form conflicts with another advance directive of the patient which addresses a substantially
similar health care condition or treatment, the document most recently signed by the patient takes precedence. Such directives may include, but are not limited to:

(a) A living will.

(b) A health care power of attorney.

(c) A POLST form for the specific medical condition or treatment.

(d) An order not to resuscitate.

(6) POLST FORM FOR A MINOR PATIENT.—If a medical order on a POLST form executed for a minor patient directs that life-sustaining treatment may be withheld from the minor patient, the order must include certifications by the patient’s examining physician and a health care provider other than the examining physician stating that, in their clinical judgment, an order to withhold medical treatment is in the best interest of the minor patient. A POLST form for a minor patient must be signed by the minor patient’s legal representative. The minor patient’s examining physician must certify the basis for the authority of the minor patient’s legal representative to execute the POLST form on behalf of the minor patient, including the legal representative’s compliance with the relevant provisions of chapter 744 or chapter 765.

(7) POLST FORM NOT A PREREQUISITE.—A POLST form may not be a prerequisite for receiving medical services or for admission to a health care facility. A health care facility or health care provider may not require an individual to complete, revise, or revoke a POLST form as a condition of receiving medical services or treatment or as a condition of admission. The execution, revision, or revocation of a POLST form must be a voluntary
decision of the patient or, if the patient is incapacitated or a minor, the patient’s legal representative.

(8) REVOCATION OF A POLST FORM.—

(a) A POLST form may be revoked at any time by a patient deemed to have capacity by means of:

1. A signed, dated writing;
2. The physical cancellation or destruction of the POLST form by the patient or by another in the patient’s presence and at the patient’s direction;
3. An oral expression of intent to revoke; or
4. A subsequently executed POLST form or advance directive that is materially different from a previously executed POLST form or advance directive.

(b) A surrogate, proxy, court-appointed guardian, or attorney-in-fact permitted to execute a POLST form on behalf of a patient as provided in paragraph (1)(c) who created a POLST form for a patient may revoke a POLST form at any time in a writing signed by such surrogate, proxy, court-appointed guardian, or attorney-in-fact.

(c) Any revocation of a POLST form shall be promptly communicated to the patient’s primary health care provider, primary physician, and any health care facility at which the patient is receiving care. Further, a health care professional, surrogate, proxy, court-appointed guardian, or attorney-in-fact who is informed of the revocation of a POLST form shall promptly communicate the fact of the revocation to the patient’s primary care physician, the current supervising health care professional, and any health care facility at which the patient is receiving care, to the extent known to the surrogate, proxy,
court-appointed guardian, or attorney-in-fact.

(d) Upon revocation, a POLST form shall be void. A POLST form may only be revoked in its entirety. A partial revocation of a POLST form renders the entirety of the POLST form void.

(9) INSURANCE NOT AFFECTED.—The presence or absence of a POLST form does not affect, impair, or modify a contract of life or health insurance or an annuity to which an individual is a party, and may not serve as the basis for a delay in issuing or refusing to issue a policy of life or health insurance or an annuity or for an increase or decrease in premiums charged to the individual.

(10) INVALIDITY.—A POLST form is invalid if payment or other remuneration was offered or made in exchange for execution of the form.

(11) CONSTRUCTION.—This section may not be construed to condone, authorize, or approve mercy killing or euthanasia. The Legislature does not intend that this act be construed as authorizing an affirmative or deliberate act to end an individual’s life, except to allow the natural process of dying.

Section 9. Subsection (4) of section 429.255, Florida Statutes, is amended to read:

429.255 Use of personnel; emergency care.—

(4) Facility staff may withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with an order not to resuscitate executed pursuant to s. 401.45 or a physician order for life-sustaining treatment (POLST) form executed pursuant to s. 401.451 that contains an order not to resuscitate. The department shall adopt rules providing for the implementation of such an order or POLST form
orders. Facility staff and facilities are shall not be subject to criminal prosecution or civil liability, and are not nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator pursuant to such an order or POLST form and rules adopted by the department. The absence of an order not to resuscitate executed pursuant to s. 401.45 or a POLST form executed pursuant to s. 401.451 which contains an order not to resuscitate does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator as otherwise authorized permitted by law.

Section 10. Subsection (3) of section 429.73, Florida Statutes, is amended to read:

429.73 Rules and standards relating to adult family-care homes.—

(3) The department shall adopt rules providing for the implementation of orders not to resuscitate and physician order for life-sustaining treatment (POLST) forms executed pursuant to s. 401.451 which contain orders not to resuscitate. The provider may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45 or a POLST form executed pursuant to s. 401.451 which contains an order not to resuscitate. The provider is shall not be subject to criminal prosecution or civil liability, and is not nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order or POLST form and applicable rules.
Section 11. Subsections (7) and (8) of section 456.072, Florida Statutes, are renumbered as subsections (8) and (9), respectively, and a new subsection (7) is added to that section to read:

456.072 Grounds for discipline; penalties; enforcement.—
(7) A licensee may withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with an order not to resuscitate executed pursuant to s. 401.45 or a physician order for life-sustaining treatment (POLST) form executed pursuant to s. 401.451 which contains an order not to resuscitate. The department shall adopt rules providing for the implementation of such an order or POLST form. A licensee is not subject to criminal prosecution or civil liability and is not considered to have engaged in negligent or unprofessional conduct for withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with such an order or POLST form. The absence of such an order or POLST form does not preclude a licensee from withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator as otherwise authorized by law.

Section 12. Paragraph (c) of subsection (1) of section 765.205, Florida Statutes, is amended to read:
765.205 Responsibility of the surrogate.—
(1) The surrogate, in accordance with the principal’s instructions, unless such authority has been expressly limited by the principal, shall:
(c) Provide written consent using an appropriate form whenever consent is required, including a physician’s order not
to resuscitate or a physician order for life-sustaining
treatment (POLST) form executed pursuant to s. 401.451 which
contains an order not to resuscitate.

Section 13. This act shall take effect July 1, 2018.

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to physician orders for life-
sustaining treatment; amending ss. 395.1041, 400.142,
and 400.487, F.S.; authorizing specified personnel to
withhold or withdraw cardiopulmonary resuscitation if
presented with orders not to resuscitate or POLST
forms that contain orders not to resuscitate;
providing such personnel with immunity from criminal
prosecution or civil liability for such actions;
providing that the absence of such orders or forms
does not preclude physicians or home health agency
personnel from withholding or withdrawing
cardiopulmonary resuscitation under certain
conditions; amending s. 400.605, F.S.; requiring the
Department of Elderly Affairs, in consultation with
the Agency for Health Care Administration, to adopt by
rule procedures for the implementation of POLST forms
in hospice care; amending s. 400.6095, F.S.;
authorizing hospice care teams to withhold or withdraw
cardiopulmonary resuscitation if presented with POLST
forms that contain orders not to resuscitate; providing hospice staff with immunity from criminal prosecution or civil liability for such actions; providing that the absence of a POLST form does not preclude physicians from withholding or withdrawing cardiopulmonary resuscitation; amending s. 401.35, F.S.; requiring the Department of Health to establish circumstances and procedures for honoring POLST forms; amending s. 401.45, F.S.; authorizing emergency medical personnel to withhold or withdraw cardiopulmonary resuscitation or other medical interventions if presented with POLST forms that contain orders not to resuscitate; creating s. 401.451, F.S.; establishing the Physician Order for Life-Sustaining Treatment (POLST) Program within the Department of Health; providing requirements for POLST forms; providing duties of the department; providing a restriction on the use of POLST forms; providing for the revocation of POLST forms under certain circumstances; specifying which document takes precedence when directives in POLST forms conflict with other advance directives; providing limited immunity for legal representatives and specified health care providers relying in good faith on POLST forms; specifying additional requirements for POLST forms executed on behalf of minor patients under certain circumstances; requiring the review of POLST forms upon the transfer of a patient; prohibiting POLST forms from being required as a condition for
treatment or admission to health care facilities; providing for the revocation of POLST forms under certain circumstances; providing that the presence or absence of POLST forms does not affect, impair, or modify certain insurance contracts; declaring POLST forms invalid if they are executed in exchange for payment or other remuneration; providing construction; amending s. 429.255, F.S.; authorizing assisted living facility personnel to withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with POLST forms that contain orders not to resuscitate; providing facility staff and facilities with immunity from criminal prosecution or civil liability for such actions; providing that the absence of a POLST form does not preclude physicians from withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator; amending s. 429.73, F.S.; requiring the Department of Elderly Affairs to adopt rules for the implementation of POLST forms in adult family-care homes; authorizing providers of such homes to withhold or withdraw cardiopulmonary resuscitation if presented with a POLST form that contains orders not to resuscitate; providing such providers with immunity from criminal prosecution or civil liability for such actions; amending s. 456.072, F.S.; authorizing licensees to withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator if
presented with orders not to resuscitate or POLST forms that contain orders not to resuscitate;
requiring the Department of Health to adopt rules providing for the implementation of such orders or forms; providing licensees with immunity from criminal prosecution or civil liability for withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator if presented with such orders or forms; providing that the absence of such orders or forms does not preclude licensees from withholding or withdrawing cardiopulmonary resuscitation or the use of an automated external defibrillator; amending s. 765.205, F.S.; requiring health care surrogates to provide written consent for POLST forms under certain circumstances; providing an effective date.