



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.; specifying that a
43 | principal's wishes are controlling while he or she has
44 | decisionmaking capacity; providing a duty for
45 | providers to communicate to such a principal;
46 | conforming provisions to changes made by the act;
47 | providing for notification of incapacity of a
48 | principal; providing that a health care provider may
49 | justifiably rely on decisions made by a surrogate;
50 | providing for situations when there are conflicting
51 | decisions between surrogate and patient; amending s.
52 | 765.205, F.S.; conforming provisions to changes made



53 | by the act; amending ss. 765.302, 765.303, 765.304,
54 | 765.306, 765.404, and 765.516, F.S.; conforming
55 | provisions to changes made by the act; providing an
56 | effective date.

57 |

58 | Be It Enacted by the Legislature of the State of Florida:

59 |

60 | Section 1. Paragraph (b) of subsection (1) and paragraph
61 | (a) of subsection (2) of section 743.0645, Florida Statutes, are
62 | amended to read:

63 | 743.0645 Other persons who may consent to medical care or
64 | treatment of a minor.—

65 | (1) As used in this section, the term:

66 | (b) "Medical care and treatment" includes ordinary and
67 | necessary medical and dental examination and treatment,
68 | including blood testing, preventive care including ordinary
69 | immunizations, tuberculin testing, and well-child care, but does
70 | not include surgery, general anesthesia, provision of
71 | psychotropic medications, or other extraordinary procedures for
72 | which a separate court order, health care surrogate designation
73 | under s. 765.2035 executed after September 30, 2015, power of
74 | attorney executed after July 1, 2001, or informed consent as
75 | provided by law is required, except as provided in s. 39.407(3).

76 | (2) Any of the following persons, in order of priority
77 | listed, may consent to the medical care or treatment of a minor
78 | who is not committed to the Department of Children and Families



79 | or the Department of Juvenile Justice or in their custody under
80 | chapter 39, chapter 984, or chapter 985 when, after a reasonable
81 | attempt, a person who has the power to consent as otherwise
82 | provided by law cannot be contacted by the treatment provider
83 | and actual notice to the contrary has not been given to the
84 | provider by that person:

85 | (a) A health care surrogate designated under s. 765.2035
86 | after September 30, 2015, or a person who possesses a power of
87 | attorney to provide medical consent for the minor. A health care
88 | surrogate designation under s. 765.2035 executed after September
89 | 30, 2015, and a power of attorney executed after July 1, 2001,
90 | to provide medical consent for a minor includes the power to
91 | consent to medically necessary surgical and general anesthesia
92 | services for the minor unless such services are excluded by the
93 | individual executing the health care surrogate for a minor or
94 | power of attorney.

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

98 | Section 2. Section 765.101, Florida Statutes, is amended
99 | to read:

100 | 765.101 Definitions.—As used in this chapter:

101 | (1) "Advance directive" means a witnessed written document
102 | or oral statement in which instructions are given by a principal
103 | or in which the principal's desires are expressed concerning any
104 | aspect of the principal's health care or health information, and



105 includes, but is not limited to, the designation of a health
106 care surrogate, a living will, or an anatomical gift made
107 pursuant to part V of this chapter.

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

112 (3) "Close personal friend" means any person 18 years of
113 age or older who has exhibited special care and concern for the
114 patient, and who presents an affidavit to the health care
115 facility or to the primary ~~attending or treating~~ physician
116 stating that he or she is a friend of the patient; is willing
117 and able to become involved in the patient's health care; and
118 has maintained such regular contact with the patient so as to be
119 familiar with the patient's activities, health, and religious or
120 moral beliefs.

121 (4) "End-stage condition" means an irreversible condition
122 that is caused by injury, disease, or illness which has resulted
123 in progressively severe and permanent deterioration, and which,
124 to a reasonable degree of medical probability, treatment of the
125 condition would be ineffective.

126 (5) "Health care" means care, services, or supplies
127 related to the health of an individual and includes, but is not
128 limited to, preventive, diagnostic, therapeutic, rehabilitative,
129 maintenance, or palliative care, and counseling, service,
130 assessment, or procedure with respect to the individual's



131 physical or mental condition or functional status or that affect
132 the structure or function of the individual's body.

133 (6)~~(5)~~ "Health care decision" means:

134 (a) Informed consent, refusal of consent, or withdrawal of
135 consent to any and all health care, including life-prolonging
136 procedures and mental health treatment, unless otherwise stated
137 in the advance directives.

138 (b) The decision to apply for private, public, government,
139 or veterans' benefits to defray the cost of health care.

140 (c) The right of access to health information ~~all records~~
141 of the principal reasonably necessary for a health care
142 surrogate or proxy to make decisions involving health care and
143 to apply for benefits.

144 (d) The decision to make an anatomical gift pursuant to
145 part V of this chapter.

146 (7)~~(6)~~ "Health care facility" means a hospital, nursing
147 home, hospice, home health agency, or health maintenance
148 organization licensed in this state, or any facility subject to
149 part I of chapter 394.

150 (8)~~(7)~~ "Health care provider" or "provider" means any
151 person licensed, certified, or otherwise authorized by law to
152 administer health care in the ordinary course of business or
153 practice of a profession.

154 (9) "Health information" means any information, whether
155 oral or recorded in any form or medium, as defined in 45 C.F.R.
156 s. 160.103 and the Health Insurance Portability and



157 Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended,
158 that:

159 (a) Is created or received by a health care provider,
160 health care facility, health plan, public health authority,
161 employer, life insurer, school or university, or health care
162 clearinghouse; and

163 (b) Relates to the past, present, or future physical or
164 mental health or condition of the principal; the provision of
165 health care to the principal; or the past, present, or future
166 payment for the provision of health care to the principal.

167 (10)-(8) "Incapacity" or "incompetent" means the patient is
168 physically or mentally unable to communicate a willful and
169 knowing health care decision. For the purposes of making an
170 anatomical gift, the term also includes a patient who is
171 deceased.

172 (11)-(9) "Informed consent" means consent voluntarily given
173 by a person after a sufficient explanation and disclosure of the
174 subject matter involved to enable that person to have a general
175 understanding of the treatment or procedure and the medically
176 acceptable alternatives, including the substantial risks and
177 hazards inherent in the proposed treatment or procedures, and to
178 make a knowing health care decision without coercion or undue
179 influence.

180 (12)-(10) "Life-prolonging procedure" means any medical
181 procedure, treatment, or intervention, including artificially
182 provided sustenance and hydration, which sustains, restores, or



183 supplants a spontaneous vital function. The term does not
184 include the administration of medication or performance of
185 medical procedure, when such medication or procedure is deemed
186 necessary to provide comfort care or to alleviate pain.

187 (13)~~(11)~~ "Living will" or "declaration" means:

188 (a) A witnessed document in writing, voluntarily executed
189 by the principal in accordance with s. 765.302; or

190 (b) A witnessed oral statement made by the principal
191 expressing the principal's instructions concerning life-
192 prolonging procedures.

193 (14) "Minor's principal" means a principal who is a
194 natural guardian as defined in s. 744.301(1); legal custodian;
195 or, subject to chapter 744, legal guardian of the person of a
196 minor.

197 (15)~~(12)~~ "Persistent vegetative state" means a permanent
198 and irreversible condition of unconsciousness in which there is:

199 (a) The absence of voluntary action or cognitive behavior
200 of any kind.

201 (b) An inability to communicate or interact purposefully
202 with the environment.

203 (16)~~(13)~~ "Physician" means a person licensed pursuant to
204 chapter 458 or chapter 459.

205 (17) "Primary physician" means a physician designated by
206 an individual or the individual's surrogate, proxy, or agent
207 under a durable power of attorney as provided in chapter 709, to
208 have primary responsibility for the individual's health care or,



209 in the absence of a designation or if the designated physician
210 is not reasonably available, a physician who undertakes the
211 responsibility.

212 (18)-(14) "Principal" means a competent adult executing an
213 advance directive and on whose behalf health care decisions are
214 to be made or health care information is to be received, or
215 both.

216 (19)-(15) "Proxy" means a competent adult who has not been
217 expressly designated to make health care decisions for a
218 particular incapacitated individual, but who, nevertheless, is
219 authorized pursuant to s. 765.401 to make health care decisions
220 for such individual.

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

225 (21)-(16) "Surrogate" means any competent adult expressly
226 designated by a principal to make health care decisions and to
227 receive health information. The principal may stipulate whether
228 the authority of the surrogate to make health care decisions or
229 to receive health information is exercisable immediately without
230 the necessity for a determination of incapacity or only upon the
231 principal's incapacity as provided in s. 765.204 ~~on behalf of~~
232 ~~the principal upon the principal's incapacity.~~

233 (22)-(17) "Terminal condition" means a condition caused by
234 injury, disease, or illness from which there is no reasonable



235 | medical probability of recovery and which, without treatment,
236 | can be expected to cause death.

237 | Section 3. Subsections (3) through (6) of section 765.102,
238 | Florida Statutes, are renumbered as subsections (4) through (7),
239 | respectively, present subsections (2) and (3) are amended, and a
240 | new subsection (3) is added to that section, to read:

241 | 765.102 Legislative findings and intent.—

242 | (2) To ensure that such right is not lost or diminished by
243 | virtue of later physical or mental incapacity, the Legislature
244 | intends that a procedure be established to allow a person to
245 | plan for incapacity by executing a document or orally
246 | designating another person to direct the course of his or her
247 | health care or receive his or her health information, or both,
248 | ~~medical treatment~~ upon his or her incapacity. Such procedure
249 | should be less expensive and less restrictive than guardianship
250 | and permit a previously incapacitated person to exercise his or
251 | her full right to make health care decisions as soon as the
252 | capacity to make such decisions has been regained.

253 | (3) The Legislature also recognizes that some competent
254 | adults may want to receive immediate assistance in making health
255 | care decisions or accessing health information, or both, without
256 | a determination of incapacity. The Legislature intends that a
257 | procedure be established to allow a person to designate a
258 | surrogate to make health care decisions or receive health
259 | information, or both, without the necessity for a determination
260 | of incapacity under this chapter.



261 ~~(4)(3)~~ The Legislature recognizes that for some the
262 administration of life-prolonging medical procedures may result
263 in only a precarious and burdensome existence. In order to
264 ensure that the rights and intentions of a person may be
265 respected even after he or she is no longer able to participate
266 actively in decisions concerning himself or herself, and to
267 encourage communication among such patient, his or her family,
268 and his or her physician, the Legislature declares that the laws
269 of this state recognize the right of a competent adult to make
270 an advance directive instructing his or her physician to
271 provide, withhold, or withdraw life-prolonging procedures, or to
272 designate another to make the health care ~~treatment~~ decision for
273 him or her in the event that such person should become
274 incapacitated and unable to personally direct his or her health
275 ~~medical~~ care.

276 Section 4. Subsection (1) of section 765.104, Florida
277 Statutes, is amended to read:

278 765.104 Amendment or revocation.—

279 (1) An advance directive ~~or designation of a surrogate~~ may
280 be amended or revoked at any time by a competent principal:

281 (a) By means of a signed, dated writing;

282 (b) By means of the physical cancellation or destruction
283 of the advance directive by the principal or by another in the
284 principal's presence and at the principal's direction;

285 (c) By means of an oral expression of intent to amend or
286 revoke; or



287 (d) By means of a subsequently executed advance directive
288 that is materially different from a previously executed advance
289 directive.

290 Section 5. Section 765.105, Florida Statutes, is amended
291 to read:

292 765.105 Review of surrogate or proxy's decision.—

293 (1) The patient's family, the health care facility, or the
294 primary attending physician, or any other interested person who
295 may reasonably be expected to be directly affected by the
296 surrogate or proxy's decision concerning any health care
297 decision may seek expedited judicial intervention pursuant to
298 rule 5.900 of the Florida Probate Rules, if that person
299 believes:

300 (a)~~(1)~~ The surrogate or proxy's decision is not in accord
301 with the patient's known desires or ~~the provisions of this~~
302 chapter;

303 (b)~~(2)~~ The advance directive is ambiguous, or the patient
304 has changed his or her mind after execution of the advance
305 directive;

306 (c)~~(3)~~ The surrogate or proxy was improperly designated or
307 appointed, or the designation of the surrogate is no longer
308 effective or has been revoked;

309 (d)~~(4)~~ The surrogate or proxy has failed to discharge
310 duties, or incapacity or illness renders the surrogate or proxy
311 incapable of discharging duties;

312 (e)~~(5)~~ The surrogate or proxy has abused his or her



313 powers; or

314 (f)~~(6)~~ The patient has sufficient capacity to make his or
315 her own health care decisions.

316 (2) This section does not apply to a patient who is not
317 incapacitated and who has designated a surrogate who has
318 immediate authority to make health care decisions and receive
319 health information, or both, on behalf of the patient.

320 Section 6. Subsection (1) of section 765.1103, Florida
321 Statutes, is amended to read:

322 765.1103 Pain management and palliative care.—

323 (1) A patient shall be given information concerning pain
324 management and palliative care when he or she discusses with the
325 primary ~~attending or treating~~ physician, or such physician's
326 designee, the diagnosis, planned course of treatment,
327 alternatives, risks, or prognosis for his or her illness. If the
328 patient is incapacitated, the information shall be given to the
329 patient's health care surrogate or proxy, court-appointed
330 guardian as provided in chapter 744, or attorney in fact under a
331 durable power of attorney as provided in chapter 709. The court-
332 appointed guardian or attorney in fact must have been delegated
333 authority to make health care decisions on behalf of the
334 patient.

335 Section 7. Section 765.1105, Florida Statutes, is amended
336 to read:

337 765.1105 Transfer of a patient.—

338 (1) A health care provider or facility that refuses to



339 comply with a patient's advance directive, or the treatment
340 decision of his or her surrogate or proxy, shall make reasonable
341 efforts to transfer the patient to another health care provider
342 or facility that will comply with the directive or treatment
343 decision. This chapter does not require a health care provider
344 or facility to commit any act which is contrary to the
345 provider's or facility's moral or ethical beliefs, if the
346 patient:

347 (a) Is not in an emergency condition; and

348 (b) Has received written information upon admission
349 informing the patient of the policies of the health care
350 provider or facility regarding such moral or ethical beliefs.

351 (2) A health care provider or facility that is unwilling
352 to carry out the wishes of the patient or the treatment decision
353 of his or her surrogate or proxy because of moral or ethical
354 beliefs must within 7 days either:

355 (a) Transfer the patient to another health care provider
356 or facility. The health care provider or facility shall pay the
357 costs for transporting the patient to another health care
358 provider or facility; or

359 (b) If the patient has not been transferred, carry out the
360 wishes of the patient or the patient's surrogate or proxy,
361 unless ~~the provisions of s. 765.105~~ applies ~~apply~~.

362 Section 8. Subsections (1), (3), and (4) of section
363 765.202, Florida Statutes, are amended, subsections (6) and (7)



364 are renumbered as subsections (7) and (8), respectively, and a
365 new subsection (6) is added to that section, to read:

366 765.202 Designation of a health care surrogate.—

367 (1) A written document designating a surrogate to make
368 health care decisions for a principal or receive health
369 information on behalf of a principal, or both, shall be signed
370 by the principal in the presence of two subscribing adult
371 witnesses. A principal unable to sign the instrument may, in the
372 presence of witnesses, direct that another person sign the
373 principal's name as required herein. An exact copy of the
374 instrument shall be provided to the surrogate.

375 (3) A document designating a health care surrogate may
376 also designate an alternate surrogate provided the designation
377 is explicit. The alternate surrogate may assume his or her
378 duties as surrogate for the principal if the original surrogate
379 is not willing, able, or reasonably available ~~unwilling or~~
380 ~~unable~~ to perform his or her duties. The principal's failure to
381 designate an alternate surrogate shall not invalidate the
382 designation of a surrogate.

383 (4) If neither the designated surrogate nor the designated
384 alternate surrogate is willing, able, or reasonably available
385 ~~able or willing~~ to make health care decisions on behalf of the
386 principal and in accordance with the principal's instructions,
387 the health care facility may seek the appointment of a proxy
388 pursuant to part IV.



389 (6) A principal may stipulate in the document that the
390 authority of the surrogate to receive health information or make
391 health care decisions or both is exercisable immediately without
392 the necessity for a determination of incapacity as provided in
393 s. 765.204.

394 Section 9. Section 765.203, Florida Statutes, is amended
395 to read:

396 765.203 Suggested form of designation.—A written
397 designation of a health care surrogate executed pursuant to this
398 chapter may, but need not be, in the following form:

399 DESIGNATION OF HEALTH CARE SURROGATE

400 I, ...(name)..., designate as my health care surrogate under s.
401 765.202, Florida Statutes:

402
403 Name: ...(name of health care surrogate)...

404 Address: ...(address)...

405 Phone: ...(telephone)...

406

407 If my health care surrogate is not willing, able, or reasonably
408 available to perform his or her duties, I designate as my
409 alternate health care surrogate:

410

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

412 Address: ...(address)...

413 Phone: ...(telephone)...

414

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.

...(Initial here)... Specific instructions and



441 restrictions:
442
443

445 While I have decisionmaking capacity, my wishes are controlling
446 and my physicians and health care providers must clearly
447 communicate to me the treatment plan or any change to the
448 treatment plan prior to its implementation.

449
450 To the extent I am capable of understanding, my health care
451 surrogate shall keep me reasonably informed of all decisions
452 that he or she has made on my behalf and matters concerning me.

453
454 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY
455 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA
456 STATUTES.

457
458 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT
459 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND
460 THIS DESIGNATION BY:

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

463 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN
464 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY
465 DIRECTION;

466 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE



467 THIS DESIGNATION; OR
 468 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
 469 FROM THIS DESIGNATION.

470
 471 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
 472 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
 473 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
 474 FOLLOWING BOXES:

475
 476 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 477 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
 478 IMMEDIATELY.

479
 480 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 481 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
 482 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,
 483 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER
 484 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERCEDE
 485 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE
 486 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

487
 488 SIGNATURES: Sign and date the form here:

489 ...(date)... ...(sign your name)...
 490 ...(address)... ...(print your name)...
 491 ...(city)... ...(state)...

492



493 SIGNATURES OF WITNESSES:

494	<u>First witness</u>	<u>Second witness</u>
495	<u>...(print name)...</u>	<u>...(print name)...</u>
496	<u>...(address)...</u>	<u>...(address)...</u>
497	<u>...(city)... ..(state)...</u>	<u>...(city)... ..(state)...</u>
498	<u>...(signature of witness)...</u>	<u>...(signature of witness)...</u>
499	<u>...(date)...</u>	<u>...(date)...</u>

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

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

505 Name:.....

506 Address:.....

507

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

508

509 Phone:.....

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

512 Name:.....

513 Address:.....

514

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

515

516 Phone:.....



517 | ~~I fully understand that this designation will permit my~~
518 | ~~designee to make health care decisions and to provide, withhold,~~
519 | ~~or withdraw consent on my behalf; to apply for public benefits~~
520 | ~~to defray the cost of health care; and to authorize my admission~~
521 | ~~to or transfer from a health care facility.~~

522 | Additional instructions (optional):.....

523 |

524 |

525 |

526 | ~~I further affirm that this designation is not being made as~~
527 | ~~a condition of treatment or admission to a health care facility.~~
528 | ~~I will notify and send a copy of this document to the following~~
529 | ~~persons other than my surrogate, so they may know who my~~
530 | ~~surrogate is.~~

531 | Name:.....

532 | Name:.....

533 |

534 |

535 | Signed:.....

536 | Date:.....

537 |

538 | Witnesses: 1.——

 2.——

539 |

540 | Section 10. Section 765.2035, Florida Statutes, is created



541 to read:

542 765.2035 Designation of a health care surrogate for a
543 minor.-

544 (1) A natural guardian as defined in s. 744.301(1), legal
545 custodian, or legal guardian of the person of a minor may
546 designate a competent adult to serve as a surrogate to make
547 health care decisions for the minor. Such designation shall be
548 made by a written document signed by the minor's principal in
549 the presence of two subscribing adult witnesses. If a minor's
550 principal is unable to sign the instrument, the principal may,
551 in the presence of witnesses, direct that another person sign
552 the minor's principal's name as required by this subsection. An
553 exact copy of the instrument shall be provided to the surrogate.

554 (2) The person designated as surrogate may not act as
555 witness to the execution of the document designating the health
556 care surrogate.

557 (3) A document designating a health care surrogate may
558 also designate an alternate surrogate; however, such designation
559 must be explicit. The alternate surrogate may assume his or her
560 duties as surrogate if the original surrogate is not willing,
561 able, or reasonably available to perform his or her duties. The
562 minor's principal's failure to designate an alternate surrogate
563 does not invalidate the designation.

564 (4) If neither the designated surrogate or the designated
565 alternate surrogate is willing, able, or reasonably available to
566 make health care decisions for the minor on behalf of the



567 minor's principal and in accordance with the minor's principal's
568 instructions, s. 743.0645(2) shall apply as if no surrogate had
569 been designated.

570 (5) A natural guardian as defined in s. 744.301(1), legal
571 custodian, or legal guardian of the person of a minor may
572 designate a separate surrogate to consent to mental health
573 treatment for the minor. However, unless the document
574 designating the health care surrogate expressly states
575 otherwise, the court shall assume that the health care surrogate
576 authorized to make health care decisions for a minor under this
577 chapter is also the minor's principal's choice to make decisions
578 regarding mental health treatment for the minor.

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

584 (7) A written designation of a health care surrogate
585 executed pursuant to this section establishes a rebuttable
586 presumption of clear and convincing evidence of the minor's
587 principal's designation of the surrogate and becomes effective
588 pursuant to s. 743.0645(2) (a).

589 Section 11. Section 765.2038, Florida Statutes, is created
590 to read:

591 765.2038 Designation of health care surrogate for a minor;
592 suggested form.—A written designation of a health care surrogate



593 | for a minor executed pursuant to this chapter may, but need to
594 | be, in the following form:

595 | DESIGNATION OF HEALTH CARE SURROGATE
596 | FOR MINOR

597 | I/We, ... (name/names) ..., the [...] natural guardian(s)
598 | as defined in s. 744.301(1), Florida Statutes; [...] legal
599 | custodian(s); [...] legal guardian(s) [check one] of the
600 | following minor(s):

- 601 |
602 |;
603 |;
604 |,

605 |
606 | pursuant to s. 765.2035, Florida Statutes, designate the
607 | following person to act as my/our surrogate for health care
608 | decisions for such minor(s) in the event that I/we am/are not
609 | able or reasonably available to provide consent for medical
610 | treatment and surgical and diagnostic procedures:

611 |
612 | Name: ... (name) ...
613 | Address: ... (address) ...
614 | Zip Code: ... (zip code) ...
615 | Phone: ... (telephone) ...
616 |

617 | If my/our designated health care surrogate for a minor is
618 | not willing, able, or reasonably available to perform his or her



619 duties, I/we designate the following person as my/our alternate
620 health care surrogate for a minor:

621
622 Name: ...(name)...

623 Address: ...(address)...

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

625 Phone: ...(telephone)...
626

627 I/We authorize and request all physicians, hospitals, or
628 other providers of medical services to follow the instructions
629 of my/our surrogate or alternate surrogate, as the case may be,
630 at any time and under any circumstances whatsoever, with regard
631 to medical treatment and surgical and diagnostic procedures for
632 a minor, provided the medical care and treatment of any minor is
633 on the advice of a licensed physician.
634

635 I/We fully understand that this designation will permit
636 my/our designee to make health care decisions for a minor and to
637 provide, withhold, or withdraw consent on my/our behalf, to
638 apply for public benefits to defray the cost of health care, and
639 to authorize the admission or transfer of a minor to or from a
640 health care facility.
641

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



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Name: ... (name) ...

Name: ... (name) ...

Signed: ... (signature) ...

Date: ... (date) ...

WITNESSES:

1. ... (witness) ...

2. ... (witness) ...

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

765.204 Capacity of principal; procedure.—

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. While a principal has decisionmaking capacity, the principal's wishes are controlling. Each physician or health care provider must clearly communicate to a principal with decisionmaking capacity the treatment plan and any change to the treatment plan prior to implementation of the plan or the change to the plan. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from her or his intellectual disability.

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is



671 in question, the primary or attending physician shall evaluate
672 the principal's capacity and, if the evaluating physician
673 concludes that the principal lacks capacity, enter that
674 evaluation in the principal's medical record. If the evaluating
675 ~~attending~~ physician has a question as to whether the principal
676 lacks capacity, another physician shall also evaluate the
677 principal's capacity, and if the second physician agrees that
678 the principal lacks the capacity to make health care decisions
679 or provide informed consent, the health care facility shall
680 enter both physician's evaluations in the principal's medical
681 record. If the principal has designated a health care surrogate
682 or has delegated authority to make health care decisions to an
683 attorney in fact under a durable power of attorney, the health
684 care facility shall notify such surrogate or attorney in fact in
685 writing that her or his authority under the instrument has
686 commenced, as provided in chapter 709 or s. 765.203. If an
687 attending physician determines that the principal lacks
688 capacity, the hospital in which the attending physician made
689 such a determination shall notify the principal's primary
690 physician of the determination.

691 (3) The surrogate's authority commences either shall
692 ~~commence~~ upon a determination under subsection (2) that the
693 principal lacks capacity or upon a stipulation of such authority
694 pursuant to s. 765.101(21). ~~and~~ Such authority remains shall
695 ~~remain~~ in effect until a determination that the principal has
696 regained such capacity, if the authority commenced as a result



697 of incapacity, or until the authority is revoked, if the
698 authority commenced immediately pursuant to s. 765.101(21). Upon
699 commencement of the surrogate's authority, a surrogate who is
700 not the principal's spouse shall notify the principal's spouse
701 or adult children of the principal's designation of the
702 surrogate. Except if the principal provided immediately
703 exercisable authority to the surrogate pursuant to s.
704 765.101(21), in the event that the primary or attending
705 physician determines that the principal has regained capacity,
706 the authority of the surrogate shall cease, but recommences
707 ~~shall recommence~~ if the principal subsequently loses capacity as
708 determined pursuant to this section. A health care provider is
709 not liable for relying upon health care decisions made by a
710 surrogate while the principal lacks capacity. At any time when a
711 principal lacks capacity, a health care decision made on the
712 principal's behalf by a surrogate is effective to the same
713 extent as a decision made by the principal. If a principal
714 possesses capacity, health care decisions of the principal take
715 precedence over decisions made by the surrogate that present a
716 material conflict.

717 (4) Notwithstanding subsections (2) and (3), if the
718 principal has designated a health care surrogate and has
719 stipulated that the authority of the surrogate is to take effect
720 immediately, or has appointed an agent under a durable power of
721 attorney as provided in chapter 709 to make health care
722 decisions for the principal, the health care facility shall



723 notify such surrogate or agent in writing when a determination
724 of incapacity has been entered into the principal's medical
725 record.

726 (5)~~(4)~~ A determination made pursuant to this section that
727 a principal lacks capacity to make health care decisions shall
728 not be construed as a finding that a principal lacks capacity
729 for any other purpose.

730 (6)~~(5)~~ If ~~In the event~~ the surrogate is required to
731 consent to withholding or withdrawing life-prolonging
732 procedures, ~~the provisions of part III applies shall apply.~~

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

735 765.205 Responsibility of the surrogate.—

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

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

741 (2) The surrogate may authorize the release of health
742 information ~~and medical records~~ to appropriate persons to ensure
743 the continuity of the principal's health care and may authorize
744 the admission, discharge, or transfer of the principal to or
745 from a health care facility or other facility or program
746 licensed under chapter 400 or chapter 429.

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



749 765.302 Procedure for making a living will; notice to
750 physician.—

751 (2) It is the responsibility of the principal to provide
752 for notification to her or his primary ~~attending or treating~~
753 physician that the living will has been made. In the event the
754 principal is physically or mentally incapacitated at the time
755 the principal is admitted to a health care facility, any other
756 person may notify the physician or health care facility of the
757 existence of the living will. A primary ~~An attending or treating~~
758 physician or health care facility which is so notified shall
759 promptly make the living will or a copy thereof a part of the
760 principal's medical records.

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

763 765.303 Suggested form of a living will.—

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

Living Will

767 Declaration made this day of, ...(year)...., I,
768, willfully and voluntarily make known my desire that my
769 dying not be artificially prolonged under the circumstances set
770 forth below, and I do hereby declare that, if at any time I am
771 incapacitated and

772 ...(initial)... I have a terminal condition
773 or ...(initial)... I have an end-stage condition
774 or ...(initial)... I am in a persistent vegetative state



775 | and if my primary ~~attending or treating~~ physician and another
 776 | consulting physician have determined that there is no reasonable
 777 | medical probability of my recovery from such condition, I direct
 778 | that life-prolonging procedures be withheld or withdrawn when
 779 | the application of such procedures would serve only to prolong
 780 | artificially the process of dying, and that I be permitted to
 781 | die naturally with only the administration of medication or the
 782 | performance of any medical procedure deemed necessary to provide
 783 | me with comfort care or to alleviate pain.

784 | It is my intention that this declaration be honored by my
 785 | family and physician as the final expression of my legal right
 786 | to refuse medical or surgical treatment and to accept the
 787 | consequences for such refusal.

788 | In the event that I have been determined to be unable to
 789 | provide express and informed consent regarding the withholding,
 790 | withdrawal, or continuation of life-prolonging procedures, I
 791 | wish to designate, as my surrogate to carry out the provisions
 792 | of this declaration:

793 | Name:.....

794 | Address:.....

795 | Zip Code:.....

796 |
 797 | Phone:.....

798 | I understand the full import of this declaration, and I am
 799 | emotionally and mentally competent to make this declaration.



800 Additional Instructions (optional):
 801
 802
 803
 804 (Signed)
 805Witness.....
 806Address.....
 807Phone.....
 808Witness.....
 809Address.....
 810Phone.....

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

813 765.304 Procedure for living will.—

814 (1) If a person has made a living will expressing his or
 815 her desires concerning life-prolonging procedures, but has not
 816 designated a surrogate to execute his or her wishes concerning
 817 life-prolonging procedures or designated a surrogate under part
 818 II, the person's primary ~~attending~~ physician may proceed as
 819 directed by the principal in the living will. In the event of a
 820 dispute or disagreement concerning the primary ~~attending~~
 821 physician's decision to withhold or withdraw life-prolonging
 822 procedures, the primary ~~attending~~ physician shall not withhold
 823 or withdraw life-prolonging procedures pending review under s.
 824 765.105. If a review of a disputed decision is not sought within
 825 7 days following the primary ~~attending~~ physician's decision to



826 withhold or withdraw life-prolonging procedures, the primary
827 ~~attending~~ physician may proceed in accordance with the
828 principal's instructions.

829 Section 17. Section 765.306, Florida Statutes, is amended
830 to read:

831 765.306 Determination of patient condition.—In determining
832 whether the patient has a terminal condition, has an end-stage
833 condition, or is in a persistent vegetative state or may recover
834 capacity, or whether a medical condition or limitation referred
835 to in an advance directive exists, the patient's primary
836 ~~attending or treating~~ physician and at least one other
837 consulting physician must separately examine the patient. The
838 findings of each such examination must be documented in the
839 patient's medical record and signed by each examining physician
840 before life-prolonging procedures may be withheld or withdrawn.

841 Section 18. Section 765.404, Florida Statutes, is amended
842 to read:

843 765.404 Persistent vegetative state.—For persons in a
844 persistent vegetative state, as determined by the person's
845 primary ~~attending~~ physician in accordance with currently
846 accepted medical standards, who have no advance directive and
847 for whom there is no evidence indicating what the person would
848 have wanted under such conditions, and for whom, after a
849 reasonably diligent inquiry, no family or friends are available
850 or willing to serve as a proxy to make health care decisions for
851 them, life-prolonging procedures may be withheld or withdrawn



852 under the following conditions:

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

856 (2) The guardian and the person's primary attending
857 physician, in consultation with the medical ethics committee of
858 the facility where the patient is located, conclude that the
859 condition is permanent and that there is no reasonable medical
860 probability for recovery and that withholding or withdrawing
861 life-prolonging procedures is in the best interest of the
862 patient. If there is no medical ethics committee at the
863 facility, the facility must have an arrangement with the medical
864 ethics committee of another facility or with a community-based
865 ethics committee approved by the Florida Bio-ethics Network. The
866 ethics committee shall review the case with the guardian, in
867 consultation with the person's primary attending physician, to
868 determine whether the condition is permanent and there is no
869 reasonable medical probability for recovery. The individual
870 committee members and the facility associated with an ethics
871 committee shall not be held liable in any civil action related
872 to the performance of any duties required in this subsection.

873 Section 19. Paragraph (c) of subsection (1) of section
874 765.516, Florida Statutes, is amended to read:

875 765.516 Donor amendment or revocation of anatomical gift.—

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



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878 (c) A statement made during a terminal illness or injury
879 addressed to the primary ~~an attending~~ physician, who must
880 communicate the revocation of the gift to the procurement
881 organization.

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