

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.; conforming
43 | provisions to changes made by the act; providing for
44 | notification of incapacity of a principal; amending s.
45 | 765.205, F.S.; conforming provisions to changes made
46 | by the act; providing an additional requirement when a
47 | patient has designated a surrogate to make health care
48 | decisions and receive health information, or both,
49 | without a determination of incapacity being required;
50 | amending ss. 765.302, 765.303, 765.304, 765.306,
51 | 765.404, and 765.516, F.S.; conforming provisions to
52 | changes made by the act; providing an effective date.

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

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

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

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

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

(2) Any of the following persons, in order of priority listed, may consent to the medical care or treatment of a minor who is not committed to the Department of Children and Families or the Department of Juvenile Justice or in their custody under chapter 39, chapter 984, or chapter 985 when, after a reasonable attempt, a person who has the power to consent as otherwise

79 provided by law cannot be contacted by the treatment provider
80 and actual notice to the contrary has not been given to the
81 provider by that person:

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

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

96 Section 2. Section 765.101, Florida Statutes, is amended
97 to read:

98 765.101 Definitions.—As used in this chapter:

99 (1) "Advance directive" means a witnessed written document
100 or oral statement in which instructions are given by a principal
101 or in which the principal's desires are expressed concerning any
102 aspect of the principal's health care or health information, and
103 includes, but is not limited to, the designation of a health
104 care surrogate, a living will, or an anatomical gift made

105 pursuant to part V of this chapter.

106 ~~(2) "Attending physician" means the primary physician who~~
 107 ~~has responsibility for the treatment and care of the patient.~~

108 (2)~~(3)~~ "Close personal friend" means any person 18 years
 109 of age or older who has exhibited special care and concern for
 110 the patient, and who presents an affidavit to the health care
 111 facility or to the ~~attending or~~ treating physician stating that
 112 he or she is a friend of the patient; is willing and able to
 113 become involved in the patient's health care; and has maintained
 114 such regular contact with the patient so as to be familiar with
 115 the patient's activities, health, and religious or moral
 116 beliefs.

117 (3)~~(4)~~ "End-stage condition" means an irreversible
 118 condition that is caused by injury, disease, or illness which
 119 has resulted in progressively severe and permanent
 120 deterioration, and which, to a reasonable degree of medical
 121 probability, treatment of the condition would be ineffective.

122 (4) "Health care" means care, services, or supplies
 123 related to the health of an individual and includes, but is not
 124 limited to, preventive, diagnostic, therapeutic, rehabilitative,
 125 maintenance, or palliative care, and counseling, service,
 126 assessment, or procedure with respect to the individual's
 127 physical or mental condition or functional status or that affect
 128 the structure or function of the individual's body.

129 (5) "Health care decision" means:

130 (a) Informed consent, refusal of consent, or withdrawal of

131 consent to any and all health care, including life-prolonging
 132 procedures and mental health treatment, unless otherwise stated
 133 in the advance directives.

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

136 (c) The right of access to health information ~~all records~~
 137 of the principal reasonably necessary for a health care
 138 surrogate or proxy to make decisions involving health care and
 139 to apply for benefits.

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

142 (6) "Health care facility" means a hospital, nursing home,
 143 hospice, home health agency, or health maintenance organization
 144 licensed in this state, or any facility subject to part I of
 145 chapter 394.

146 (7) "Health care provider" or "provider" means any person
 147 licensed, certified, or otherwise authorized by law to
 148 administer health care in the ordinary course of business or
 149 practice of a profession.

150 (8) "Health information" means any information, whether
 151 oral or recorded in any form or medium, as defined in 45 C.F.R.
 152 s. 160.103 and the Health Insurance Portability and
 153 Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended,
 154 that:

155 (a) Is created or received by a health care provider,
 156 health care facility, health plan, public health authority,

157 employer, life insurer, school or university, or health care
158 clearinghouse; and

159 (b) Relates to the past, present, or future physical or
160 mental health or condition of the principal; the provision of
161 health care to the principal; or the past, present, or future
162 payment for the provision of health care to the principal.

163 (9)-(8) "Incapacity" or "incompetent" means the patient is
164 physically or mentally unable to communicate a willful and
165 knowing health care decision. For the purposes of making an
166 anatomical gift, the term also includes a patient who is
167 deceased.

168 (10)-(9) "Informed consent" means consent voluntarily given
169 by a person after a sufficient explanation and disclosure of the
170 subject matter involved to enable that person to have a general
171 understanding of the treatment or procedure and the medically
172 acceptable alternatives, including the substantial risks and
173 hazards inherent in the proposed treatment or procedures, and to
174 make a knowing health care decision without coercion or undue
175 influence.

176 (11)-(10) "Life-prolonging procedure" means any medical
177 procedure, treatment, or intervention, including artificially
178 provided sustenance and hydration, which sustains, restores, or
179 supplants a spontaneous vital function. The term does not
180 include the administration of medication or performance of
181 medical procedure, when such medication or procedure is deemed
182 necessary to provide comfort care or to alleviate pain.

183 (12)~~(11)~~ "Living will" or "declaration" means:

184 (a) A witnessed document in writing, voluntarily executed

185 by the principal in accordance with s. 765.302; or

186 (b) A witnessed oral statement made by the principal

187 expressing the principal's instructions concerning life-

188 prolonging procedures.

189 (13) "Minor's principal" means a principal who is a

190 natural guardian as defined in s. 744.301(1); legal custodian;

191 or, subject to chapter 744, legal guardian of the person of a

192 minor.

193 (14)~~(12)~~ "Persistent vegetative state" means a permanent

194 and irreversible condition of unconsciousness in which there is:

195 (a) The absence of voluntary action or cognitive behavior

196 of any kind.

197 (b) An inability to communicate or interact purposefully

198 with the environment.

199 (15)~~(13)~~ "Physician" means a person licensed pursuant to

200 chapter 458 or chapter 459.

201 (16) "Primary physician" means a physician designated by

202 an individual or the individual's surrogate, proxy, or agent

203 under a durable power of attorney as provided in chapter 709, to

204 have primary responsibility for the individual's health care or,

205 in the absence of a designation or if the designated physician

206 is not reasonably available, a physician who undertakes the

207 responsibility.

208 (17)~~(14)~~ "Principal" means a competent adult executing an

209 advance directive and on whose behalf health care decisions are
 210 to be made or health care information is to be received, or
 211 both.

212 (18)-(15) "Proxy" means a competent adult who has not been
 213 expressly designated to make health care decisions for a
 214 particular incapacitated individual, but who, nevertheless, is
 215 authorized pursuant to s. 765.401 to make health care decisions
 216 for such individual.

217 (19) "Reasonably available" means readily able to be
 218 contacted without undue effort and willing and able to act in a
 219 timely manner considering the urgency of the patient's health
 220 care needs.

221 (20)-(16) "Surrogate" means any competent adult expressly
 222 designated by a principal to make health care decisions and to
 223 receive health information. The principal may stipulate whether
 224 the authority of the surrogate to make health care decisions or
 225 to receive health information is exercisable immediately without
 226 the necessity for a determination of incapacity or only upon the
 227 principal's incapacity as provided in s. 765.204 ~~on behalf of~~
 228 ~~the principal upon the principal's incapacity.~~

229 (21)-(17) "Terminal condition" means a condition caused by
 230 injury, disease, or illness from which there is no reasonable
 231 medical probability of recovery and which, without treatment,
 232 can be expected to cause death.

233 Section 3. Subsections (3) through (6) of section 765.102,
 234 Florida Statutes, are renumbered as subsections (4) through (7),

235 respectively, present subsections (2) and (3) are amended, and a
 236 new subsection (3) is added to that section, to read:

237 765.102 Legislative findings and intent.—

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

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

257 (4)~~(3)~~ The Legislature recognizes that for some the
 258 administration of life-prolonging medical procedures may result
 259 in only a precarious and burdensome existence. In order to
 260 ensure that the rights and intentions of a person may be

261 respected even after he or she is no longer able to participate
262 actively in decisions concerning himself or herself, and to
263 encourage communication among such patient, his or her family,
264 and his or her physician, the Legislature declares that the laws
265 of this state recognize the right of a competent adult to make
266 an advance directive instructing his or her physician to
267 provide, withhold, or withdraw life-prolonging procedures, or to
268 designate another to make the health care ~~treatment~~ decision for
269 him or her in the event that such person should become
270 incapacitated and unable to personally direct his or her health
271 ~~medical~~ care.

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

274 765.104 Amendment or revocation.—

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

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

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

281 (c) By means of an oral expression of intent to amend or
282 revoke; or

283 (d) By means of a subsequently executed advance directive
284 that is materially different from a previously executed advance
285 directive.

286 Section 5. Section 765.105, Florida Statutes, is amended

287 to read:

288 765.105 Review of surrogate or proxy's decision.—

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

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

298 (b)~~(2)~~ The advance directive is ambiguous, or the patient
 299 has changed his or her mind after execution of the advance
 300 directive;

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

304 (d)~~(4)~~ The surrogate or proxy has failed to discharge
 305 duties, or incapacity or illness renders the surrogate or proxy
 306 incapable of discharging duties;

307 (e)~~(5)~~ The surrogate or proxy has abused his or her
 308 powers; or

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

311 (2) This section does not apply to a patient who is not
 312 incapacitated and who has designated a surrogate who has

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313 immediate authority to make health care decisions and receive
314 health information, or both, on behalf of the patient.

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

317 765.1103 Pain management and palliative care.—

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

330 Section 7. Section 765.1105, Florida Statutes, is amended
331 to read:

332 765.1105 Transfer of a patient.—

333 (1) A health care provider or facility that refuses to
334 comply with a patient's advance directive, or the treatment
335 decision of his or her surrogate or proxy, shall make reasonable
336 efforts to transfer the patient to another health care provider
337 or facility that will comply with the directive or treatment
338 decision. This chapter does not require a health care provider

339 or facility to commit any act which is contrary to the
 340 provider's or facility's moral or ethical beliefs, if the
 341 patient:

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

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

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

350 (a) Transfer the patient to another health care provider
 351 or facility. The health care provider or facility shall pay the
 352 costs for transporting the patient to another health care
 353 provider or facility; or

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

357 Section 8. Subsections (1), (3), and (4) of section
 358 765.202, Florida Statutes, are amended, subsections (6) and (7)
 359 are renumbered as subsections (7) and (8), respectively, and a
 360 new subsection (6) is added to that section, to read:

361 765.202 Designation of a health care surrogate.—

362 (1) A written document designating a surrogate to make
 363 health care decisions for a principal or receive health
 364 information on behalf of a principal, or both, shall be signed

365 by the principal in the presence of two subscribing adult
366 witnesses. A principal unable to sign the instrument may, in the
367 presence of witnesses, direct that another person sign the
368 principal's name as required herein. An exact copy of the
369 instrument shall be provided to the surrogate.

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

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

384 (6) A principal may stipulate in the document that the
385 authority of the surrogate to receive health information or make
386 health care decisions or both is exercisable immediately without
387 the necessity for a determination of incapacity as provided in
388 s. 765.204.

389 Section 9. Section 765.203, Florida Statutes, is amended
390 to read:

391 765.203 Suggested form of designation.—A written
 392 designation of a health care surrogate executed pursuant to this
 393 chapter may, but need not be, in the following form:

394 DESIGNATION OF HEALTH CARE SURROGATE

395 I, ...(name)..., designate as my health care surrogate under s.
 396 765.202, Florida Statutes:

397
 398 Name: ...(name of health care surrogate)...

399 Address: ...(address)...

400 Phone: ...(telephone)...

401
 402 If my health care surrogate is not willing, able, or reasonably
 403 available to perform his or her duties, I designate as my
 404 alternate health care surrogate:

405
 406 Name: ...(name of alternate health care surrogate)...

407 Address: ...(address)...

408 Phone: ...(telephone)...

409
 410 INSTRUCTIONS FOR HEALTH CARE

411 I authorize my health care surrogate to:

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

- 414 1. Is created or received by a health care provider,
 415 health care facility, health plan, public health authority,
 416 employer, life insurer, school or university, or health care

417 clearinghouse; and

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

422 I further authorize my health care surrogate to:

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

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

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

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

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

435 ...(Initial here)... Specific instructions and
436 restrictions:
437
438

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

443
 444 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY
 445 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA
 446 STATUTES.

447
 448 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
 449 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
 450 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
 451 FOLLOWING BOXES:

452
 453 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 454 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
 455 IMMEDIATELY.

456
 457 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 458 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
 459 IMMEDIATELY.

460
 461 SIGNATURES: Sign and date the form here:

462 ...(date)... ...(sign your name)...
 463 ...(address)... ...(print your name)...
 464 ...(city)... ..(state)...

465
 466 SIGNATURES OF WITNESSES:

467 First witness Second witness
 468 ...(print name)... ...(print name)...

469 ... (address) (address) ...
 470 ... (city) ... (state) (city) ... (state) ...
 471 ... (signature of witness) (signature of witness) ...
 472 ... (date) (date) ...

473 ~~Name:..... (Last)..... (First)..... (Middle Initial).....~~

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

478 ~~Name:.....~~

479 ~~Address:.....~~

480

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

481

482 ~~Phone:.....~~

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

485 ~~Name:.....~~

486 ~~Address:.....~~

487

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

488

489 ~~Phone:.....~~

490 ~~I fully understand that this designation will permit my~~
 491 ~~designee to make health care decisions and to provide, withhold,~~
 492 ~~or withdraw consent on my behalf; to apply for public benefits~~

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493 ~~to defray the cost of health care; and to authorize my admission~~
494 ~~to or transfer from a health care facility.~~

495 Additional instructions (optional):.....
496
497
498

499 ~~I further affirm that this designation is not being made as~~
500 ~~a condition of treatment or admission to a health care facility.~~
501 ~~I will notify and send a copy of this document to the following~~
502 ~~persons other than my surrogate, so they may know who my~~
503 ~~surrogate is.~~

504 Name:.....

505 Name:.....

506

507

508 Signed:.....

509 Date:.....

510

Witnesses: 1.——

511

 2.——

512

513 Section 10. Section 765.2035, Florida Statutes, is created
514 to read:

515 765.2035 Designation of a health care surrogate for a
516 minor.—

517 (1) A natural guardian as defined in s. 744.301(1), legal
518 custodian, or legal guardian of the person of a minor may
519 designate a competent adult to serve as a surrogate to make
520 health care decisions for the minor. Such designation shall be
521 made by a written document signed by the minor's principal in
522 the presence of two subscribing adult witnesses. If a minor's
523 principal is unable to sign the instrument, the principal may,
524 in the presence of witnesses, direct that another person sign
525 the minor's principal's name as required by this subsection. An
526 exact copy of the instrument shall be provided to the surrogate.

527 (2) The person designated as surrogate may not act as
528 witness to the execution of the document designating the health
529 care surrogate.

530 (3) A document designating a health care surrogate may
531 also designate an alternate surrogate; however, such designation
532 must be explicit. The alternate surrogate may assume his or her
533 duties as surrogate if the original surrogate is not willing,
534 able, or reasonably available to perform his or her duties. The
535 minor's principal's failure to designate an alternate surrogate
536 does not invalidate the designation.

537 (4) If neither the designated surrogate or the designated
538 alternate surrogate is willing, able, or reasonably available to
539 make health care decisions for the minor on behalf of the
540 minor's principal and in accordance with the minor's principal's
541 instructions, s. 743.0645(2) shall apply as if no surrogate had
542 been designated.

543 (5) A natural guardian as defined in s. 744.301(1), legal
544 custodian, or legal guardian of the person of a minor may
545 designate a separate surrogate to consent to mental health
546 treatment for the minor. However, unless the document
547 designating the health care surrogate expressly states
548 otherwise, the court shall assume that the health care surrogate
549 is authorized to make health care decisions for a minor under
550 this chapter is also the minor's principal's choice to make
551 decisions regarding mental health treatment for the minor.

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

557 (7) A written designation of a health care surrogate
558 executed pursuant to this section establishes a rebuttable
559 presumption of clear and convincing evidence of the minor's
560 principal's designation of the surrogate and becomes effective
561 pursuant to s. 743.0645(2)(a).

562 Section 11. Section 765.2038, Florida Statutes, is created
563 to read:

564 765.2038 Designation of health care surrogate for a minor;
565 suggested form.—A written designation of a health care surrogate
566 for a minor executed pursuant to this chapter may, but need to
567 be, in the following form:

568 DESIGNATION OF HEALTH CARE SURROGATE

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FOR MINOR

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

.....;
.....;
.....,

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

Name: ... (name) ...
Address: ... (address) ...
Zip Code: ... (zip code) ...
Phone: ... (telephone) ...

If my/our designated health care surrogate for a minor is
not willing, able, or reasonably available to perform his or her
duties, I/we designate the following person as my/our alternate
health care surrogate for a minor:

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595 Name: ... (name)...
 596 Address: ... (address)...
 597 Zip Code: ... (zip code)...
 598 Phone: ... (telephone)...

599
 600 I/We authorize and request all physicians, hospitals, or
 601 other providers of medical services to follow the instructions
 602 of my/our surrogate or alternate surrogate, as the case may be,
 603 at any time and under any circumstances whatsoever, with regard
 604 to medical treatment and surgical and diagnostic procedures for
 605 a minor, provided the medical care and treatment of any minor is
 606 on the advice of a licensed physician.

607
 608 I/We fully understand that this designation will permit
 609 my/our designee to make health care decisions for a minor and to
 610 provide, withhold, or withdraw consent on my/our behalf, to
 611 apply for public benefits to defray the cost of health care, and
 612 to authorize the admission or transfer of a minor to or from a
 613 health care facility.

614
 615 I/We will notify and send a copy of this document to the
 616 following person(s) other than my/our surrogate, so that they
 617 may know the identity of my/our surrogate:

618
 619 Name: ... (name)...
 620 Name: ... (name)...

621
 622 Signed: ... (signature)...

623 Date: ... (date)...

624

625 WITNESSES:

626 1. ... (witness)...

627 2. ... (witness)...

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

630 765.204 Capacity of principal; procedure.—

631 (1) A principal is presumed to be capable of making health
 632 care decisions for herself or himself unless she or he is
 633 determined to be incapacitated. Incapacity may not be inferred
 634 from the person's voluntary or involuntary hospitalization for
 635 mental illness or from her or his intellectual disability.

636 (2) If a principal's capacity to make health care
 637 decisions for herself or himself or provide informed consent is
 638 in question, the ~~attending~~ physician shall evaluate the
 639 principal's capacity and, if the physician concludes that the
 640 principal lacks capacity, enter that evaluation in the
 641 principal's medical record. If the ~~attending~~ physician has a
 642 question as to whether the principal lacks capacity, another
 643 physician shall also evaluate the principal's capacity, and if
 644 the second physician agrees that the principal lacks the
 645 capacity to make health care decisions or provide informed
 646 consent, the health care facility shall enter both physician's

647 evaluations in the principal's medical record. If the principal
648 has designated a health care surrogate or has delegated
649 authority to make health care decisions to an attorney in fact
650 under a durable power of attorney, the health care facility
651 shall notify such surrogate or attorney in fact in writing that
652 her or his authority under the instrument has commenced, as
653 provided in chapter 709 or s. 765.203.

654 (3) The surrogate's authority shall commence upon a
655 determination under subsection (2) that the principal lacks
656 capacity, and such authority shall remain in effect until a
657 determination that the principal has regained such capacity.
658 Upon commencement of the surrogate's authority, a surrogate who
659 is not the principal's spouse shall notify the principal's
660 spouse or adult children of the principal's designation of the
661 surrogate. In the event the ~~attending~~ physician determines that
662 the principal has regained capacity, the authority of the
663 surrogate shall cease, but shall recommence if the principal
664 subsequently loses capacity as determined pursuant to this
665 section.

666 (4) Notwithstanding subsections (2) and (3), if the
667 principal has designated a health care surrogate and has
668 stipulated that the authority of the surrogate is to take effect
669 immediately, or has appointed an agent under a durable power of
670 attorney as provided in chapter 709 to make health care
671 decisions for the principal, the health care facility shall
672 notify such surrogate or agent in writing when a determination

673 of incapacity has been entered into the principal's medical
674 record.

675 (5)-(4) A determination made pursuant to this section that
676 a principal lacks capacity to make health care decisions shall
677 not be construed as a finding that a principal lacks capacity
678 for any other purpose.

679 (6)-(5) If ~~In the event~~ the surrogate is required to
680 consent to withholding or withdrawing life-prolonging
681 procedures, ~~the provisions of part III applies shall apply.~~

682 Section 13. Section 765.205, Florida Statutes, is amended
683 to read:

684 765.205 Responsibility of the surrogate.—

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

688 (a) Have authority to act for the principal and to make
689 all health care decisions for the principal during the
690 principal's incapacity.

691 (b) Consult expeditiously with appropriate health care
692 providers to provide informed consent, and make only health care
693 decisions for the principal which he or she believes the
694 principal would have made under the circumstances if the
695 principal were capable of making such decisions. If there is no
696 indication of what the principal would have chosen, the
697 surrogate may consider the patient's best interest in deciding
698 that proposed treatments are to be withheld or that treatments

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699 currently in effect are to be withdrawn.

700 (c) Provide written consent using an appropriate form
701 whenever consent is required, including a physician's order not
702 to resuscitate.

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

705 (e) Apply for public benefits, such as Medicare and
706 Medicaid, for the principal and have access to information
707 regarding the principal's income and assets and banking and
708 financial records to the extent required to make application. A
709 health care provider or facility may not, however, make such
710 application a condition of continued care if the principal, if
711 capable, would have refused to apply.

712 (2) The surrogate may authorize the release of health
713 information ~~and medical records~~ to appropriate persons to ensure
714 the continuity of the principal's health care and may authorize
715 the admission, discharge, or transfer of the principal to or
716 from a health care facility or other facility or program
717 licensed under chapter 400 or chapter 429.

718 (3) Notwithstanding subsections (1) and (2), if the
719 principal has designated a health care surrogate and has
720 stipulated that the authority of the surrogate is to take effect
721 immediately, or has appointed an agent under a durable power of
722 attorney as provided in chapter 709 to make health care
723 decisions for the principal, the fundamental right of self-
724 determination of every competent adult regarding his or her

725 health care decisions shall be controlling. Before implementing
 726 a health care decision made for a principal who is not
 727 incapacitated, the primary physician, another physician, a
 728 health care provider, or a health care facility, if possible,
 729 must promptly communicate to the principal the decision made and
 730 the identity of the person making the decision.

731 (4)-(3)- If, after the appointment of a surrogate, a court
 732 appoints a guardian, the surrogate shall continue to make health
 733 care decisions for the principal, unless the court has modified
 734 or revoked the authority of the surrogate pursuant to s.
 735 744.3115. The surrogate may be directed by the court to report
 736 the principal's health care status to the guardian.

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

739 765.302 Procedure for making a living will; notice to
 740 physician.—

741 (2) It is the responsibility of the principal to provide
 742 for notification to her or his ~~attending or~~ treating physician
 743 that the living will has been made. In the event the principal
 744 is physically or mentally incapacitated at the time the
 745 principal is admitted to a health care facility, any other
 746 person may notify the physician or health care facility of the
 747 existence of the living will. A ~~An attending or~~ treating
 748 physician or health care facility which is so notified shall
 749 promptly make the living will or a copy thereof a part of the
 750 principal's medical records.

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

753 765.303 Suggested form of a living will.—

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

756 Living Will

757 Declaration made this day of, ...(year)..., I,
 758, willfully and voluntarily make known my desire that my
 759 dying not be artificially prolonged under the circumstances set
 760 forth below, and I do hereby declare that, if at any time I am
 761 incapacitated and

762 ...(initial)... I have a terminal condition

763 or ...(initial)... I have an end-stage condition

764 or ...(initial)... I am in a persistent vegetative state

765 and if my ~~attending or~~ treating physician and another consulting
 766 physician have determined that there is no reasonable medical
 767 probability of my recovery from such condition, I direct that
 768 life-prolonging procedures be withheld or withdrawn when the
 769 application of such procedures would serve only to prolong
 770 artificially the process of dying, and that I be permitted to
 771 die naturally with only the administration of medication or the
 772 performance of any medical procedure deemed necessary to provide
 773 me with comfort care or to alleviate pain.

774 It is my intention that this declaration be honored by my
 775 family and physician as the final expression of my legal right
 776 to refuse medical or surgical treatment and to accept the

777 consequences for such refusal.

778 In the event that I have been determined to be unable to
779 provide express and informed consent regarding the withholding,
780 withdrawal, or continuation of life-prolonging procedures, I
781 wish to designate, as my surrogate to carry out the provisions
782 of this declaration:

783 Name:.....

784 Address:.....

785

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

786

787 Phone:.....

788 I understand the full import of this declaration, and I am
789 emotionally and mentally competent to make this declaration.

790 Additional Instructions (optional):

791

792

793

794(Signed).....

795Witness.....

796Address.....

797Phone.....

798Witness.....

799Address.....

800Phone.....

801 Section 16. Subsection (1) of section 765.304, Florida

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802 Statutes, is amended to read:

803 765.304 Procedure for living will.—

804 (1) If a person has made a living will expressing his or
805 her desires concerning life-prolonging procedures, but has not
806 designated a surrogate to execute his or her wishes concerning
807 life-prolonging procedures or designated a surrogate under part
808 II, the person's ~~attending~~ physician may proceed as directed by
809 the principal in the living will. In the event of a dispute or
810 disagreement concerning the ~~attending~~ physician's decision to
811 withhold or withdraw life-prolonging procedures, the ~~attending~~
812 physician shall not withhold or withdraw life-prolonging
813 procedures pending review under s. 765.105. If a review of a
814 disputed decision is not sought within 7 days following the
815 ~~attending~~ physician's decision to withhold or withdraw life-
816 prolonging procedures, the ~~attending~~ physician may proceed in
817 accordance with the principal's instructions.

818 Section 17. Section 765.306, Florida Statutes, is amended
819 to read:

820 765.306 Determination of patient condition.—In determining
821 whether the patient has a terminal condition, has an end-stage
822 condition, or is in a persistent vegetative state or may recover
823 capacity, or whether a medical condition or limitation referred
824 to in an advance directive exists, the patient's ~~attending or~~
825 treating physician and at least one other consulting physician
826 must separately examine the patient. The findings of each such
827 examination must be documented in the patient's medical record

828 and signed by each examining physician before life-prolonging
829 procedures may be withheld or withdrawn.

830 Section 18. Section 765.404, Florida Statutes, is amended
831 to read:

832 765.404 Persistent vegetative state.—For persons in a
833 persistent vegetative state, as determined by the person's
834 ~~attending~~ physician in accordance with currently accepted
835 medical standards, who have no advance directive and for whom
836 there is no evidence indicating what the person would have
837 wanted under such conditions, and for whom, after a reasonably
838 diligent inquiry, no family or friends are available or willing
839 to serve as a proxy to make health care decisions for them,
840 life-prolonging procedures may be withheld or withdrawn under
841 the following conditions:

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

845 (2) The guardian and the person's ~~attending~~ physician, in
846 consultation with the medical ethics committee of the facility
847 where the patient is located, conclude that the condition is
848 permanent and that there is no reasonable medical probability
849 for recovery and that withholding or withdrawing life-prolonging
850 procedures is in the best interest of the patient. If there is
851 no medical ethics committee at the facility, the facility must
852 have an arrangement with the medical ethics committee of another
853 facility or with a community-based ethics committee approved by

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854 the Florida Bio-ethics Network. The ethics committee shall
855 review the case with the guardian, in consultation with the
856 person's ~~attending~~ physician, to determine whether the condition
857 is permanent and there is no reasonable medical probability for
858 recovery. The individual committee members and the facility
859 associated with an ethics committee shall not be held liable in
860 any civil action related to the performance of any duties
861 required in this subsection.

862 Section 19. Paragraph (c) of subsection (1) of section
863 765.516, Florida Statutes, is amended to read:

864 765.516 Donor amendment or revocation of anatomical gift.—

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

867 (c) A statement made during a terminal illness or injury
868 addressed to a treating ~~an attending~~ physician, who must
869 communicate the revocation of the gift to the procurement
870 organization.

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