



Health Quality Subcommittee

Tuesday, March 24, 2015

1:00 PM - 3:00 PM

306 HOB

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time: Tuesday, March 24, 2015 01:00 pm
End Date and Time: Tuesday, March 24, 2015 03:00 pm
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 889 Health Care Representatives by Civil Justice Subcommittee, Wood

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, March 23, 2015.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 23, 2015.

NOTICE FINALIZED on 03/20/2015 15:48 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 889 Health Care Representatives
SPONSOR(S): Civil Justice Subcommittee; Wood
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Bond	Bond
2) Health Quality Subcommittee		McElroy <i>ct</i>	O'Callaghan <i>MO</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides several methods for a person to make health care decisions, and in some instances access health information, on behalf of another person. One such method is the designation by an adult person of another adult person to act as a health care surrogate. A health care surrogate is authorized to review confidential medical information and to make health care decisions in the place of the principal. Generally, a determination of incapacity of the principal is required before the health care surrogate may act.

Because a principal may regain capacity and in some instances, especially with the elderly, may vacillate in and out of capacity, a redetermination of incapacity is frequently necessary to provide ongoing authorization for the health care surrogate to act. This process can hinder effective and timely assistance and is cumbersome. Further, some competent persons desire the assistance of a health care surrogate with the sometimes complex task of understanding health care treatments and procedures and with making health care decisions.

This bill amends the health care surrogate law to allow a person to designate a health care surrogate, who may act at any time, including while an adult is still competent and able to make his or her own decisions.

This bill also creates a means for designating a health care surrogate for the benefit of a minor when the parents, legal custodian, or legal guardian of the minor cannot be timely contacted by a health care provider or are unable to provide consent for medical treatment.

The bill also creates sample forms that may be used to designate health care surrogates for adults and minors.

This bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background

Advance Directives

Competent adults may formulate, in advance, preferences regarding a course of treatment in the event that injury or illness causes severe impairment or loss of decision-making capacity. These preferences generally should be honored by the health care team out of respect for patient autonomy. Patients may establish an advance directive by documenting their treatment preferences and goals in a living will, by designating a health care surrogate, or by using a durable power of attorney for health care to make health care decisions on their behalf.¹ All 50 states permit an individual to use an advance directive to express his or her wishes as to medical treatment in the event the individual becomes terminally ill or has an injury or disease making the individual unable to communicate or make medical decisions.²

Physicians should recognize the patient's proxy or surrogate as an extension of the patient, entitled to the same respect as the competent patient.³ Physicians should provide advice, guidance, and support; explain that decisions should be based on substituted judgment when possible and otherwise on the best interest principle; and offer relevant medical information as well as medical opinions in a timely manner. In addition to the physician, other hospital staff or ethics committees are often helpful to providing support for the decision-makers.⁴

Health Care Surrogates

Part II of Chapter 765, F.S., entitled "Health Care Surrogate," governs the designation of health care surrogates in the State of Florida. A health care surrogate is a competent adult expressly designated by a principal to make health care decisions on behalf of the principal upon the principal's incapacity.⁵ Section 765.203, F.S., provides a suggested form for the designation of a health care surrogate.⁶

If an adult fails to designate a surrogate or a designated surrogate is unwilling or unable to perform his or her duties, a health care facility may seek the appointment of a proxy⁷ to serve as surrogate upon the incapacity of such person.⁸ A surrogate appointed by the principal or by proxy, may, subject to any limitations and instructions provided by the principal, take the following actions:⁹

¹ American Medical Association, Opinion 8.081, AMA Code of Medical Ethics, "Surrogate Decision Making," available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion8081.page?> (last visited on March 20, 2015).

² American Bar Association, "Living Wills, Health Care Proxies, & Advance Health Care Directives," available at http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/living_wills_health_care_proxies_advance_health_care_directives.html (last visited on March 20, 2015).

³ *Supra* fn. 1.

⁴ *Supra* fn. 1.

⁵ s. 765.101(16), F.S.

⁶ By law hospitals, nursing homes, home health agencies, hospices, and health maintenance organizations (HMOs) are required to provide their patients with written information, such as this pamphlet, concerning health care advance directives. The state rules that require this include rules 58A-2.0232, 59A-3.254, 59A-4.106, 59A-8.0245, and 59A-12.013, Florida Administrative Code. Agency for Health Care Administration, "Health Care Advance Directives," available at <http://www.floridahealthfinder.gov/reports-guides/advance-directives.aspx> (last visited on March 20, 2015).

⁷ "Proxy" means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401, F.S., to make health care decisions for such individual. s. 765.101(15), F.S.

⁸ ss. 765.202(4) and 765.401, F.S.

⁹ s.765.205, F.S.

- Make all health care decisions¹⁰ for the principal during the principal's incapacity;
- Consult expeditiously with appropriate health care providers to provide informed consent, including written consent where required, provided that such consent reflects the principal's wishes or the principal's best interests;
- Have access to the appropriate medical records of the principal;
- Apply for public benefits for the principal and have access to information regarding the principal's income, assets, and financial records to the extent required to make such application;
- Authorize the release of information and medical records to appropriate persons to ensure continuity of the principal's health care; and
- Authorize the admission, discharge, or transfer of the principal to or from a health care facility.

The surrogate's authority to act commences upon a determination that the principle is incapacitated.¹¹ A determination of incapacity is required to be made by a physician.¹² If the physician evaluation finds that the principal is incapacitated and the principal has designated a health care surrogate, a health care facility will notify such surrogate in writing that her or his authority under the instrument has commenced.¹³ The health care surrogate's authority continues until a determination that the principal has regained capacity. If a principal goes in and out of capacity, a redetermination of incapacity is necessary each time before a health care surrogate may make health care decisions.¹⁴

This process can hinder effective and timely assistance and is cumbersome. Further, some competent persons desire the assistance of a health care surrogate with the sometimes complex task of understanding health care treatments and procedures and with making health care decisions, but may not effectively empower such persons to act on their behalf due to the restriction that a health care surrogate act only for incapacitated persons.

Additionally, there is no statutory authority for a health care surrogate to be designated for a minor or for a health care facility to seek a proxy to serve as a health care surrogate for a minor when his or her parents, legal custodian, or legal guardian cannot be timely contacted by the health care provider or are unable to consent to medical treatment.

Effect of the Bill

Health Care Surrogate for an Adult

The bill creates s. 765.202(6), F.S., to provide that an individual may elect to designate a health care surrogate who may act while the individual is still competent to make health care decisions. To that end, the bill:

- Adds a legislative finding at s. 765.102(3), F.S., that some competent adults want a health care surrogate to assist them with making medical decisions.
- Provides that statutory provisions for review of the decision of a health care surrogate at s. 765.105, F.S., do not apply when the individual who appointed the health care surrogate is still competent.

¹⁰ "Health care decision" means: informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives; the decision to apply for private, public, government, or veterans' benefits to defray the cost of health care; the right of access to all records of the principal reasonably necessary for a health care surrogate to make decisions involving health care and to apply for benefits; and the decision to make an anatomical gift pursuant to part V of ch. 765, F.S.

¹¹ s. 765.204(3), F.S.

¹² s. 765.204, F.S.

¹³ s. 765.204(2), F.S.

¹⁴ s. 765.204(3), F.S.

- Amends s. 765.204, F.S., which relates to determinations of incapacity, to require a health care facility to notify the surrogate upon a determination of incapacity. The notification requirement also requires notice to the attorney in fact if the health care facility knows of a durable power of attorney.
- Current law under s. 765.202(3), F.S., provides that an alternate health care surrogate may act where the primary surrogate is unwilling or unable to act. The bill adds that an alternate may also act where the primary surrogate is not reasonably available.

The changes to law regarding health care surrogates for adults are reflected in an amended statutory form under s. 765.203, F.S. (See Attachment I)

Health Care Surrogate for a Minor

In general, a minor does not have the legal right to consent to medical care or treatment. Instead, for non-emergency treatment, a parent or legal guardian must give consent. As to emergency treatment, where the parents, legal custodian or legal guardian of a minor cannot be timely contacted to give consent for medical treatment of a minor, s. 743.0645(2), F.S., sets forth a list of people who have the power to consent on behalf of the minor. There is no general statutory authority for non-emergency medical treatment of a minor without consent of a parent or legal guardian.

It is common for parents and legal guardians to go on vacation and leave their children with a caregiver, and equally common for parents and legal guardians to allow a minor to travel and stay with relatives or friends for a period of time. Lawyers routinely draft a power of attorney authorizing caregivers to consent to medical treatment of the minor, despite there being no statutory authority for such document.

The bill creates s. 765.2035, F.S., to create statutory authority for a parent or legal guardian to designate a health care surrogate who may consent to medical care for a minor. The designation must be in writing and signed by two witnesses. The designated surrogate may not be a witness.

Like a surrogate for an adult, an alternate surrogate may be appointed to act if the original surrogate is not willing, able, or reasonably available to act.

In addition to regular and emergency treatment, a health care surrogate for a minor is authorized to consent to mental health treatment unless the document specifically provides otherwise. The appointment of a health care surrogate for a minor remains in place until the termination date provided in the designation (if any), the minor reaches the age of majority, or the designation is revoked.

The bill also creates a sample form for a health care surrogate for a minor under s. 765.2038, F.S. (See Attachment II)

The bill amends s. 743.0645, F.S., the statute on other persons who may consent to medical care or treatment of a minor, to conform. The bill also amends that statute to recognize that a power of attorney regarding consent to authorize health care for a minor, executed between July 1, 2001 and September 30, 2015 (the day before the effective date of this bill) will be recognized as authority to consent to treatment. A designation of health care surrogate or a power of attorney is deemed to include authority to consent to surgery and/or anesthesia unless those are specifically excluded.

Other

The bill amends ss. 765.101 and 765.202, F.S., to specify that a right to consent to treatment of an individual (adult or minor) also includes the right to obtain health information regarding that individual. The bill creates s. 765.101(8), F.S., to define the term "health information" to be consistent with the Health Insurance Portability and Accountability Act (HIPAA).

The bill removes references to “attending physician” in favor of the term “treating physician” or simply “physician” in statutes related to advance directives, health care surrogates, pain management, palliative care, capacity, living wills, determination of patient condition, persistent vegetative state, and anatomical gifts. This change in terminology should have no practical effect.

The bill provides an effective date of October 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 743.0645, F.S., regarding persons who may consent to medical care or treatment of a minor.

Section 2 amends s. 765.101, F.S., regarding definitions.

Section 3 amends s. 765.102, F.S., regarding legislative findings and intent.

Section 4 amends s. 765.104, F.S., regarding amendment or revocation.

Section 5 amends s. 765.105, F.S., regarding review of surrogate or proxy's decision.

Section 6 amends s. 765.1103, F.S., regarding pain management and palliative care.

Section 7 amends s. 765.1105, F.S., regarding transfer of a patient.

Section 8 amends s. 765.202, F.S., regarding designation of a health care surrogate.

Section 9 amends s. 765.203, F.S., regarding suggested form of designation of a health care surrogate.

Section 10 creates s. 765.2035, F.S., regarding designation of a health care surrogate for a minor.

Section 11 creates s. 765.2038, F.S., regarding the suggested form for designation of health care surrogate for a minor.

Section 12 amends s. 765.204, F.S., regarding capacity of principal and procedure for determining.

Section 13 amends s. 765.205, F.S., regarding responsibility of the surrogate.

Section 14 amends s. 765.302, F.S., regarding the procedure for making a living will and notice to physician.

Section 15 amends s. 765.303, F.S., regarding suggested form of a living will.

Section 16 amends s. 765.304, F.S., regarding procedure for living will.

Section 17 amends s. 765.306, F.S., regarding determination of patient condition.

Section 18 amends s. 765.404, F.S., regarding persistent vegetative state.

Section 19 amends s. 765.516, F.S., regarding donor amendment or revocation of anatomical gift.

Section 20 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Change the terms "attending physician" and "treating physician" to "primary physician."
- Remove a provision regarding conflicts between the surrogate and the patient.
- Make grammatical and style improvements.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

Attachment I

DESIGNATION OF HEALTH CARE SURROGATE

I, _____, designate as my health care surrogate under s. 765.202, Florida Statutes:

Name: _____

Address: _____

Phone: _____

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

Name: _____

Address: _____

Phone: _____

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 restrictions:

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

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

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

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

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

SIGNATURES: Sign and date the form here:

date: _____	sign your name _____
address _____	print your name _____
city _____	state _____

SIGNATURES OF WITNESSES:

First witness:	Second witness:
print name _____	print name _____
address _____	address _____
city _____ state _____	city _____ state _____
_____	_____
signature of witness	signature of witness
date _____	date _____

Attachment II

DESIGNATION OF HEALTH CARE SURROGATE FOR MINOR

I/We, _____ 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: _____
Address: _____
Zip Code: _____ Phone: _____

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:

Name: _____
Address: _____
Zip Code: _____ Phone: _____

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

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

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

Name: _____
Name: _____

Signed: _____
Date: _____

WITNESSES:

1. _____
2. _____

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; amending ss. 765.302, 765.303, 765.304,
 47 | 765.306, 765.404, and 765.516, F.S.; conforming
 48 | provisions to changes made by the act; providing an
 49 | effective date.

50 |
 51 | Be It Enacted by the Legislature of the State of Florida:
 52 |

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

56 743.0645 Other persons who may consent to medical care or
 57 treatment of a minor.—

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

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

70 (2) Any of the following persons, in order of priority
 71 listed, may consent to the medical care or treatment of a minor
 72 who is not committed to the Department of Children and Families
 73 or the Department of Juvenile Justice or in their custody under
 74 chapter 39, chapter 984, or chapter 985 when, after a reasonable
 75 attempt, a person who has the power to consent as otherwise
 76 provided by law cannot be contacted by the treatment provider
 77 and actual notice to the contrary has not been given to the
 78 provider by that person:

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

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

93 Section 2. Section 765.101, Florida Statutes, is amended
 94 to read:

95 765.101 Definitions.—As used in this chapter:

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

105 ~~(2)(3)~~ "Close personal friend" means any person 18 years
 106 of age or older who has exhibited special care and concern for
 107 the patient, and who presents an affidavit to the health care
 108 facility or to the primary attending ~~or treating~~ physician
 109 stating that he or she is a friend of the patient; is willing
 110 and able to become involved in the patient's health care; and
 111 has maintained such regular contact with the patient so as to be
 112 familiar with the patient's activities, health, and religious or
 113 moral beliefs.

114 ~~(3)(4)~~ "End-stage condition" means an irreversible
 115 condition that is caused by injury, disease, or illness which
 116 has resulted in progressively severe and permanent
 117 deterioration, and which, to a reasonable degree of medical
 118 probability, treatment of the condition would be ineffective.

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

126 (5) "Health care decision" means:

127 (a) Informed consent, refusal of consent, or withdrawal of
 128 consent to any and all health care, including life-prolonging
 129 procedures and mental health treatment, unless otherwise stated
 130 in the advance directives.

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

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

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

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

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

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

152 (a) Is created or received by a health care provider,
 153 health care facility, health plan, public health authority,
 154 employer, life insurer, school or university, or health care
 155 clearinghouse; and

156 (b) Relates to the past, present, or future physical or

157 mental health or condition of the principal; the provision of
 158 health care to the principal; or the past, present, or future
 159 payment for the provision of health care to the principal.

160 (9)~~(8)~~ "Incapacity" or "incompetent" means the patient is
 161 physically or mentally unable to communicate a willful and
 162 knowing health care decision. For the purposes of making an
 163 anatomical gift, the term also includes a patient who is
 164 deceased.

165 (10)~~(9)~~ "Informed consent" means consent voluntarily given
 166 by a person after a sufficient explanation and disclosure of the
 167 subject matter involved to enable that person to have a general
 168 understanding of the treatment or procedure and the medically
 169 acceptable alternatives, including the substantial risks and
 170 hazards inherent in the proposed treatment or procedures, and to
 171 make a knowing health care decision without coercion or undue
 172 influence.

173 (11)~~(10)~~ "Life-prolonging procedure" means any medical
 174 procedure, treatment, or intervention, including artificially
 175 provided sustenance and hydration, which sustains, restores, or
 176 supplants a spontaneous vital function. The term does not
 177 include the administration of medication or performance of
 178 medical procedure, when such medication or procedure is deemed
 179 necessary to provide comfort care or to alleviate pain.

180 (12)~~(11)~~ "Living will" or "declaration" means:

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

183 (b) A witnessed oral statement made by the principal
 184 expressing the principal's instructions concerning life-
 185 prolonging procedures.

186 (13) "Minor's principal" means a principal who is a
 187 natural guardian as defined in s. 744.301(1); legal custodian;
 188 or, subject to chapter 744, legal guardian of the person of a
 189 minor.

190 (14)~~(12)~~ "Persistent vegetative state" means a permanent
 191 and irreversible condition of unconsciousness in which there is:

192 (a) The absence of voluntary action or cognitive behavior
 193 of any kind.

194 (b) An inability to communicate or interact purposefully
 195 with the environment.

196 (15)~~(13)~~ "Physician" means a person licensed pursuant to
 197 chapter 458 or chapter 459.

198 (16) "Primary physician" means a physician designated by
 199 an individual or the individual's surrogate, proxy, or agent
 200 under a durable power of attorney as provided in chapter 709, to
 201 have primary responsibility for the individual's health care or,
 202 in the absence of a designation or if the designated physician
 203 is not reasonably available, a physician who undertakes the
 204 responsibility.

205 (17)~~(14)~~ "Principal" means a competent adult executing an
 206 advance directive and on whose behalf health care decisions are
 207 to be made or health care information is to be received, or
 208 both.

209 ~~(18)~~~~(15)~~ "Proxy" means a competent adult who has not been
 210 expressly designated to make health care decisions for a
 211 particular incapacitated individual, but who, nevertheless, is
 212 authorized pursuant to s. 765.401 to make health care decisions
 213 for such individual.

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

218 ~~(20)~~~~(16)~~ "Surrogate" means any competent adult expressly
 219 designated by a principal to make health care decisions and to
 220 receive health information. The principal may stipulate whether
 221 the authority of the surrogate to make health care decisions or
 222 to receive health information is exercisable immediately without
 223 the necessity for a determination of incapacity or only upon the
 224 principal's incapacity as provided in s. 765.204 ~~on behalf of~~
 225 ~~the principal upon the principal's incapacity.~~

226 ~~(21)~~~~(17)~~ "Terminal condition" means a condition caused by
 227 injury, disease, or illness from which there is no reasonable
 228 medical probability of recovery and which, without treatment,
 229 can be expected to cause death.

230 Section 3. Subsections (3) through (6) of section 765.102,
 231 Florida Statutes, are renumbered as subsections (4) through (7),
 232 respectively, present subsections (2) and (3) are amended, and a
 233 new subsection (3) is added to that section, to read:

234 765.102 Legislative findings and intent.—

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

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

254 ~~(4)~~(3) The Legislature recognizes that for some the
 255 administration of life-prolonging medical procedures may result
 256 in only a precarious and burdensome existence. In order to
 257 ensure that the rights and intentions of a person may be
 258 respected even after he or she is no longer able to participate
 259 actively in decisions concerning himself or herself, and to
 260 encourage communication among such patient, his or her family,

261 and his or her physician, the Legislature declares that the laws
 262 of this state recognize the right of a competent adult to make
 263 an advance directive instructing his or her physician to
 264 provide, withhold, or withdraw life-prolonging procedures, or to
 265 designate another to make the health care ~~treatment~~ decision for
 266 him or her in the event that such person should become
 267 incapacitated and unable to personally direct his or her health
 268 ~~medical~~ care.

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

271 765.104 Amendment or revocation.—

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

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

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

278 (c) By means of an oral expression of intent to amend or
 279 revoke; or

280 (d) By means of a subsequently executed advance directive
 281 that is materially different from a previously executed advance
 282 directive.

283 Section 5. Section 765.105, Florida Statutes, is amended
 284 to read:

285 765.105 Review of surrogate or proxy's decision.—

286 (1) The patient's family, the health care facility, or the

287 primary attending physician, or any other interested person who
 288 may reasonably be expected to be directly affected by the
 289 surrogate or proxy's decision concerning any health care
 290 decision may seek expedited judicial intervention pursuant to
 291 rule 5.900 of the Florida Probate Rules, if that person
 292 believes:

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

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

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

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

305 (e)~~(5)~~ The surrogate or proxy has abused his or her
 306 powers; or

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

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

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

315 765.1103 Pain management and palliative care.—

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

328 Section 7. Section 765.1105, Florida Statutes, is amended
 329 to read:

330 765.1105 Transfer of a patient.—

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

339 patient:

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

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

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

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

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

355 Section 8. Subsections (1), (3), and (4) of section
356 765.202, Florida Statutes, are amended, subsections (6) and (7)
357 are renumbered as subsections (7) and (8), respectively, and a
358 new subsection (6) is added to that section, to read:

359 765.202 Designation of a health care surrogate.—

360 (1) A written document designating a surrogate to make
361 health care decisions for a principal or receive health
362 information on behalf of a principal, or both, shall be signed
363 by the principal in the presence of two subscribing adult
364 witnesses. A principal unable to sign the instrument may, in the

365 presence of witnesses, direct that another person sign the
 366 principal's name as required herein. An exact copy of the
 367 instrument shall be provided to the surrogate.

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

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

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

387 Section 9. Section 765.203, Florida Statutes, is amended
 388 to read:

389 765.203 Suggested form of designation.—A written
 390 designation of a health care surrogate executed pursuant to this

391 | chapter may, but need not be, in the following form:

392 | DESIGNATION OF HEALTH CARE SURROGATE

393 | I, ...(name)..., designate as my health care surrogate under s.

394 | 765.202, Florida Statutes:

395 |

396 | Name: ...(name of health care surrogate)...

397 | Address: ...(address)...

398 | Phone: ...(telephone)...

399 |

400 | If my health care surrogate is not willing, able, or reasonably

401 | available to perform his or her duties, I designate as my

402 | alternate health care surrogate:

403 |

404 | Name: ...(name of alternate health care surrogate)...

405 | Address: ...(address)...

406 | Phone: ...(telephone)...

407 |

408 | INSTRUCTIONS FOR HEALTH CARE

409 | I authorize my health care surrogate to:

410 | ...(Initial here)... Receive any of my health information,

411 | whether oral or recorded in any form or medium, that:

412 | 1. Is created or received by a health care provider,

413 | health care facility, health plan, public health authority,

414 | employer, life insurer, school or university, or health care

415 | clearinghouse; and

416 | 2. Relates to my past, present, or future physical or

417 mental health or condition; the provision of health care to me;
418 or the past, present, or future payment for the provision of
419 health care to me.

420 I further authorize my health care surrogate to:

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

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

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

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

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

433 ...(Initial here)... Specific instructions and
434 restrictions:
435
436

437
438 To the extent I am capable of understanding, my health care
439 surrogate shall keep me reasonably informed of all decisions
440 that he or she has made on my behalf and matters concerning me.

441
442 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY

443 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA
444 STATUTES.

445
446 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
447 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
448 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
449 FOLLOWING BOXES:

450
451 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
452 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
453 IMMEDIATELY.

454
455 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
456 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
457 IMMEDIATELY.

458
459 SIGNATURES: Sign and date the form here:

460 ...(date)... ...(sign your name)...
461 ...(address)... ...(print your name)...
462 ...(city)... ..(state)...

463
464 SIGNATURES OF WITNESSES:

465 First witness Second witness
466 ...(print name)... ...(print name)...
467 ...(address)... ...(address)...
468 ...(city)... ..(state)... ...(city)... ..(state)...

469 ...(signature of witness)... ...(signature of witness)...

470 ...(date)... ...(date)...

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

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

476 Name:.....

477 Address:.....

478

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

479

480 Phone:.....

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

483 Name:.....

484 Address:.....

485

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

486

487 Phone:.....

488 ~~I fully understand that this designation will permit my~~
489 ~~designee to make health care decisions and to provide, withhold,~~
490 ~~or withdraw consent on my behalf; to apply for public benefits~~
491 ~~to defray the cost of health care; and to authorize my admission~~
492 ~~to or transfer from a health care facility.~~

493 ~~Additional instructions (optional):~~.....
494
495
496

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

502 ~~Name:~~.....

503 ~~Name:~~.....

504
505

506 ~~Signed:~~.....

507 ~~Date:~~.....

508

509

Witnesses: 1. —

510

 2. —

511

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

514 765.2035 Designation of a health care surrogate for a
515 minor.—

516 (1) A natural guardian as defined in s. 744.301(1), legal
custodian, or legal guardian of the person of a minor may

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

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

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

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

541 | (5) A natural guardian as defined in s. 744.301(1), legal
 542 | custodian, or legal guardian of the person of a minor may

543 designate a separate surrogate to consent to mental health
 544 treatment for the minor. However, unless the document
 545 designating the health care surrogate expressly states
 546 otherwise, the court shall assume that the health care surrogate
 547 authorized to make health care decisions for a minor under this
 548 chapter is also the minor's principal's choice to make decisions
 549 regarding mental health treatment for the minor.

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

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

560 Section 11. Section 765.2038, Florida Statutes, is created
 561 to read:

562 765.2038 Designation of health care surrogate for a minor;
 563 suggested form.—A written designation of a health care surrogate
 564 for a minor executed pursuant to this chapter may, but need to
 565 be, in the following form:

566 DESIGNATION OF HEALTH CARE SURROGATE

567 FOR MINOR

568 I/We, ...(name/names)..., the [....] natural guardian(s)

569 as defined in s. 744.301(1), Florida Statutes; [....] legal
570 custodian(s); [....] legal guardian(s) [check one] of the
571 following minor(s):

572
573;
574;
575;

576
577 pursuant to s. 765.2035, Florida Statutes, designate the
578 following person to act as my/our surrogate for health care
579 decisions for such minor(s) in the event that I/we am/are not
580 able or reasonably available to provide consent for medical
581 treatment and surgical and diagnostic procedures:

582
583 Name: ... (name)...
584 Address: ... (address)...
585 Zip Code: ... (zip code)...
586 Phone: ... (telephone)...

587
588 If my/our designated health care surrogate for a minor is
589 not willing, able, or reasonably available to perform his or her
590 duties, I/we designate the following person as my/our alternate
591 health care surrogate for a minor:

592
593 Name: ... (name)...
594 Address: ... (address)...

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

596 Phone: ... (telephone)...

597

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

605

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

612

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

616

617 Name: ... (name)...

618 Name: ... (name)...

619

620 Signed: ... (signature)...

621 Date: ... (date)...

622

623 WITNESSES:

624 1. ... (witness)...

625 2. ... (witness)...

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

628 765.204 Capacity of principal; procedure.—

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

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

647 | authority to make health care decisions to an attorney in fact
 648 | under a durable power of attorney, the health care facility
 649 | shall notify such surrogate or attorney in fact in writing that
 650 | her or his authority under the instrument has commenced, as
 651 | provided in chapter 709 or s. 765.203.

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

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

673 ~~(5)~~(4) A determination made pursuant to this section that
 674 a principal lacks capacity to make health care decisions shall
 675 not be construed as a finding that a principal lacks capacity
 676 for any other purpose.

677 ~~(6)~~(5) ~~If In the event~~ the surrogate is required to
 678 consent to withholding or withdrawing life-prolonging
 679 procedures, ~~the provisions of part III applies shall apply.~~

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

682 765.205 Responsibility of the surrogate.—

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

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

688 (2) The surrogate may authorize the release of health
 689 information ~~and medical records~~ to appropriate persons to ensure
 690 the continuity of the principal's health care and may authorize
 691 the admission, discharge, or transfer of the principal to or
 692 from a health care facility or other facility or program
 693 licensed under chapter 400 or chapter 429.

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

696 765.302 Procedure for making a living will; notice to
 697 physician.—

698 (2) It is the responsibility of the principal to provide

699 for notification to her or his primary ~~attending or treating~~
 700 physician that the living will has been made. In the event the
 701 principal is physically or mentally incapacitated at the time
 702 the principal is admitted to a health care facility, any other
 703 person may notify the physician or health care facility of the
 704 existence of the living will. A primary ~~An attending or treating~~
 705 physician or health care facility which is so notified shall
 706 promptly make the living will or a copy thereof a part of the
 707 principal's medical records.

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

710 765.303 Suggested form of a living will.-

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

713 Living Will

714 Declaration made this day of, ...(year)..., I,
 715, willfully and voluntarily make known my desire that my
 716 dying not be artificially prolonged under the circumstances set
 717 forth below, and I do hereby declare that, if at any time I am
 718 incapacitated and

719 ...(initial)... I have a terminal condition
 720 or ...(initial)... I have an end-stage condition
 721 or ...(initial)... I am in a persistent vegetative state
 722 and if my primary ~~attending or treating~~ physician and another
 723 consulting physician have determined that there is no reasonable
 724 medical probability of my recovery from such condition, I direct

725 that life-prolonging procedures be withheld or withdrawn when
726 the application of such procedures would serve only to prolong
727 artificially the process of dying, and that I be permitted to
728 die naturally with only the administration of medication or the
729 performance of any medical procedure deemed necessary to provide
730 me with comfort care or to alleviate pain.

731 It is my intention that this declaration be honored by my
732 family and physician as the final expression of my legal right
733 to refuse medical or surgical treatment and to accept the
734 consequences for such refusal.

735 In the event that I have been determined to be unable to
736 provide express and informed consent regarding the withholding,
737 withdrawal, or continuation of life-prolonging procedures, I
738 wish to designate, as my surrogate to carry out the provisions
739 of this declaration:

740 Name:.....

741 Address:.....

742

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

743

744 Phone:.....

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

747 Additional Instructions (optional):

748

749

750
 751(Signed).....
 752Witness.....
 753Address.....
 754Phone.....
 755Witness.....
 756Address.....
 757Phone.....

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

760 765.304 Procedure for living will.—

761 (1) If a person has made a living will expressing his or
 762 her desires concerning life-prolonging procedures, but has not
 763 designated a surrogate to execute his or her wishes concerning
 764 life-prolonging procedures or designated a surrogate under part
 765 II, the person's primary attending physician may proceed as
 766 directed by the principal in the living will. In the event of a
 767 dispute or disagreement concerning the primary attending
 768 physician's decision to withhold or withdraw life-prolonging
 769 procedures, the primary attending physician shall not withhold
 770 or withdraw life-prolonging procedures pending review under s.
 771 765.105. If a review of a disputed decision is not sought within
 772 7 days following the primary attending physician's decision to
 773 withhold or withdraw life-prolonging procedures, the primary
 774 ~~attending~~ physician may proceed in accordance with the
 775 principal's instructions.

776 Section 17. Section 765.306, Florida Statutes, is amended
 777 to read:

778 765.306 Determination of patient condition.—In determining
 779 whether the patient has a terminal condition, has an end-stage
 780 condition, or is in a persistent vegetative state or may recover
 781 capacity, or whether a medical condition or limitation referred
 782 to in an advance directive exists, the patient's primary
 783 ~~attending or treating~~ physician and at least one other
 784 consulting physician must separately examine the patient. The
 785 findings of each such examination must be documented in the
 786 patient's medical record and signed by each examining physician
 787 before life-prolonging procedures may be withheld or withdrawn.

788 Section 18. Section 765.404, Florida Statutes, is amended
 789 to read:

790 765.404 Persistent vegetative state.—For persons in a
 791 persistent vegetative state, as determined by the person's
 792 primary ~~attending~~ physician in accordance with currently
 793 accepted medical standards, who have no advance directive and
 794 for whom there is no evidence indicating what the person would
 795 have wanted under such conditions, and for whom, after a
 796 reasonably diligent inquiry, no family or friends are available
 797 or willing to serve as a proxy to make health care decisions for
 798 them, life-prolonging procedures may be withheld or withdrawn
 799 under the following conditions:

- 800 (1) The person has a judicially appointed guardian
- 801 representing his or her best interest with authority to consent

802 | to medical treatment; and

803 | (2) The guardian and the person's primary ~~attending~~
 804 | physician, in consultation with the medical ethics committee of
 805 | the facility where the patient is located, conclude that the
 806 | condition is permanent and that there is no reasonable medical
 807 | probability for recovery and that withholding or withdrawing
 808 | life-prolonging procedures is in the best interest of the
 809 | patient. If there is no medical ethics committee at the
 810 | facility, the facility must have an arrangement with the medical
 811 | ethics committee of another facility or with a community-based
 812 | ethics committee approved by the Florida Bio-ethics Network. The
 813 | ethics committee shall review the case with the guardian, in
 814 | consultation with the person's primary ~~attending~~ physician, to
 815 | determine whether the condition is permanent and there is no
 816 | reasonable medical probability for recovery. The individual
 817 | committee members and the facility associated with an ethics
 818 | committee shall not be held liable in any civil action related
 819 | to the performance of any duties required in this subsection.

820 | Section 19. Paragraph (c) of subsection (1) of section
 821 | 765.516, Florida Statutes, is amended to read:

822 | 765.516 Donor amendment or revocation of anatomical gift.—

823 | (1) A donor may amend the terms of or revoke an anatomical
 824 | gift by:

825 | (c) A statement made during a terminal illness or injury
 826 | addressed to the primary ~~an attending~~ physician, who must
 827 | communicate the revocation of the gift to the procurement

CS/HB 889

2015

828 | organization.

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



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Wood offered the following:

Amendment

6 Remove lines 67-85 and insert:
7 attorney executed after July 1, 2001, or informed consent as
8 provided by law is required, except as provided in s. 39.407(3).

9 (2) Any of the following persons, in order of priority
10 listed, may consent to the medical care or treatment of a minor
11 who is not committed to the Department of Children and Families
12 or the Department of Juvenile Justice or in their custody under
13 chapter 39, chapter 984, or chapter 985 when, after a reasonable
14 attempt, a person who has the power to consent as otherwise
15 provided by law cannot be contacted by the treatment provider
16 and actual notice to the contrary has not been given to the
17 provider by that person:



Amendment No.

18 (a) A health care surrogate designated under s. 765.2035
19 after September 30, 2015, or a person who possesses a power of
20 attorney to provide medical consent for the minor. A health care
21 surrogate designation under s. 765.2035 executed after September
22 30, 2015, and a power of attorney executed after July 1, 2001,
23 to provide medical consent for a minor includes the power