

Committee Substitute for  
Committee Substitute for Senate Bill No. 2228

An act relating to end-of-life care; providing legislative findings; authorizing the Secretary of Health to develop and implement demonstration projects; requiring reports; requesting the Chancellor of the State University System to convene a working group; amending ss. 395.1041, 400.142, 400.4255, 400.487, 400.6095, 400.621, F.S.; authorizing personnel of hospital emergency services, long-term care facilities, assisted living facilities, home health agencies, hospices, and adult family-care homes to withhold or withdraw cardiopulmonary resuscitation pursuant to an order not to resuscitate; providing for rules; providing certain protection from prosecution and liability; amending s. 401.45, F.S.; revising authority of emergency medical technicians and paramedics to withhold or withdraw resuscitation or life-prolonging techniques; directing the Department of Health to develop a standardized do-not-resuscitate identification system; authorizing a fee; providing for rules; amending ss. 455.604, 458.319, 459.008, F.S.; providing that courses on end-of-life care will fulfill certain education requirements; amending s. 732.912, F.S.; revising provisions relating to who may make anatomical gifts; amending ss. 732.914, 732.917, F.S.; correcting cross-references; amending s. 732.922, F.S.; conforming provisions relating to duty of certain hospital administrators; amending s. 765.101, F.S.; revising definitions; defining the terms "persistent vegetative state" and "end-stage condition"; amending s. 765.102, F.S.; revising legislative intent relating to advance directives; amending s. 765.103, F.S.; providing for effect of existing advance directives; amending s. 765.104, F.S.; providing for amendment of an advance directive or designation of a surrogate; amending s. 765.107, F.S.; providing nonapplicability to certain persons; amending s. 765.110, F.S.; prohibiting certain actions by a health care facility or provider with respect to a patient's advance directive; increasing a penalty; requiring that advance directives become part of patients' medical records; providing for rules; amending s. 765.204, F.S.; revising provisions relating to evaluation of a patient's capacity to make health care decisions; amending s. 765.205, F.S.; revising responsibilities of the surrogate; amending s. 765.301, F.S.; correcting a cross-reference; amending s. 765.302, F.S.; revising procedure for making a living will; amending s. 765.303, F.S.; revising suggested form of a living will; amending s. 765.304, F.S.; revising procedure for implementing a living will; amending s. 765.305, F.S.; revising procedure in the absence of a living will; amending s. 765.306, F.S.; revising provisions relating to determination of the patient's condition; renumbering and amending s. 765.308, F.S.; providing for transfer of a patient under certain circumstances; renumbering and amending s. 765.310, F.S.; providing penalties for falsification, forgery, or willful concealment, cancellation, or destruction of an advance directive, or a revocation or amendment thereof; amending s. 765.401, F.S.; revising provisions

relating to decisions by a proxy; creating s. 765.404, F.S.; providing conditions for withholding or withdrawing life-prolonging procedures for certain persons in a persistent vegetative state; directing the Department of Elderly Affairs to convene a workgroup to develop model advance directive forms; providing effective dates.

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

Section 1. End-of-life care.—

(1)(a) The Legislature finds that Florida, as the fourth most populous state, is highly diverse with regard to race, ethnicity, urban and rural locales, religious practices, and cultural traditions. Florida has the largest percentage of elderly residents, the third largest incidence of AIDS, and the fourth highest death rates from heart disease and chronic obstructive pulmonary disease in the nation.

(b) The Legislature finds that the Panel for the Study of End-of-Life Care has recommended policies that will assure the citizens of this state the highest quality of compassionate, competent, and adequate end-of-life care.

(c) The Legislature finds that all persons should have access to effective pain management and palliative care; that adequate management of pain and other distressing symptoms at the end-of-life should be available; and that all settings that care for seriously ill patients should address the emotional and spiritual needs of such patients. The Legislature finds that education of physicians and other health care providers is necessary to assure that patients in pain are assessed regularly and that their pain is treated aggressively without fear of undue regulatory or legal action.

(d) The Legislature finds that an individual's experience of death and dying, and preferences about end-of-life care, are rooted in ethnic and cultural values and beliefs. The Legislature finds that social, health, and education practitioners must be trained to understand work within different cultural parameters.

(e) The Legislature finds that to provide better pain management, health care providers are to be encouraged to add the assessment of pain as a "fifth vital sign." Further, the Legislature intends that in accordance with standard and accepted medical and ethical principles, the use of pharmacological substances with the intent of alleviating or eliminating pain and other discomfort is encouraged. Such use should not be regarded as legally blameworthy, even if appropriate pain control occurs during, and so precedes the outcome of, the dying process.

(f) The Legislature finds that the State Supreme Court has declared that, based on the constitutional right to privacy, competent adults can express their wishes to receive, refuse, withhold, or withdraw any medical treatment and that right continues even when a person becomes incapacitated.

(2) The Secretary of Health is authorized to develop and implement up to two demonstration projects to evaluate strategies recommended by the Panel for the Study of End-of-Life Care. The Department of Health is

authorized to accept for that purpose any special grant of money, services, property, gifts, or donations from any organization, medical school, or Federal Government agency, and to apply for grants to support the demonstration projects. The secretary shall report to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders and relevant substantive committees of both chambers, on the demonstration projects, no later than January 30 of each year.

(3) The Chancellor of the State University System is requested to convene a working group composed of one representative from each of the Boards of Medicine, Osteopathic Medicine, Nursing, Pharmacy, Nursing Home Administrators, and Social Work, and the chairs of the four medical schools' curriculum committees, to review available curricula for end-of-life care and make recommendations through the respective boards for content and materials to be incorporated into the basic curriculum of each medical school, school of social work, and allied health discipline.

Section 2. Paragraph (l) is added to subsection (3) of section 395.1041, Florida Statutes, 1998 Supplement, to read:

395.1041 Access to emergency services and care.—

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

(l) Hospital emergency services personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order.

Section 3. Section 400.142, Florida Statutes, is amended to read:

400.142 Emergency medication kits; orders not to resuscitate.—

(1) Other provisions of this chapter or of chapter 465, chapter 499, or chapter 893 to the contrary notwithstanding, each nursing home operating pursuant to a license issued by the agency may maintain an emergency medication kit for the purpose of storing medicinal drugs to be administered under emergency conditions to residents residing in such facility.

(2) The agency shall adopt such rules as it may deem appropriate to the effective implementation of this act, including, but not limited to, rules which:

(a) Define the term “emergency medication kit.”

(b) Describe the medicinal drugs eligible to be placed in emergency medication kits.

(c) Establish requirements for the storing of medicinal drugs in emergency medication kits and the maintenance of records with respect thereto.

(d) Establish requirements for the administration of medicinal drugs to residents under emergency conditions from emergency medication kits.

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency shall adopt rules providing for the implementation of such orders. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency.

Section 4. Section 400.4255, Florida Statutes, is amended to read:

400.4255 Use of licensed personnel; emergency care.—

(1)(a) Persons under contract to the facility, facility staff, or volunteers, who are licensed according to chapter 464, or those persons exempt under s. 464.022(1), and others as defined by rule, may administer medications to residents, take residents' vital signs, manage individual weekly pill organizers for residents who self-administer medication, give prepackaged enemas ordered by a physician, observe residents, document observations on the appropriate resident's record, report observations to the resident's physician, and contract or allow residents or a resident's representative, designee, surrogate, guardian, or attorney in fact to contract with a third party, provided residents meet the criteria for appropriate placement as defined in s. 400.426. Nursing assistants certified pursuant to s. 400.211 may take residents' vital signs as directed by a licensed nurse or physician.

(b) All staff in facilities licensed under this part shall exercise their professional responsibility to observe residents, to document observations on the appropriate resident's record, and to report the observations to the resident's physician. However, the owner or administrator of the facility shall be responsible for determining that the resident receiving services is appropriate for residence in the facility.

(c) In an emergency situation, licensed personnel may carry out their professional duties pursuant to chapter 464 until emergency medical personnel assume responsibility for care.

(2) In facilities licensed to provide extended congregate care, persons under contract to the facility, facility staff, or volunteers, who are licensed according to chapter 464, or those persons exempt under s. 464.022(1), or those persons certified as nursing assistants pursuant to s. 400.211, may also perform all duties within the scope of their license or certification, as approved by the facility administrator and pursuant to this part.

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The department shall adopt rules providing for the implementation of such orders. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary

resuscitation pursuant to such an order and rules adopted by the department.

Section 5. Section 400.487, Florida Statutes, is amended to read:

400.487 Patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.—

(1) The home health agency providing care and treatment must make an assessment of the patient's needs within 48 hours after the start of services.

(2) The attending physician for a patient receiving care or treatment provided by a licensed nurse or by a physical, occupational, or speech therapist must establish a plan of care for the patient on behalf of the home health agency that provides services to the patient. The original plan of treatment must be signed by the physician and reviewed, at least every 62 days or more frequently if the patient's illness requires, by the physician in consultation with home health agency personnel that provide services to the patient.

(3) Each patient has the right to be informed of and to participate in the planning of his or her care. Each patient must be provided, upon request, a copy of the plan of care established and maintained for that patient by the home health agency.

(4) Home health services that are provided to a patient must be evaluated in the patient's home by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 or by a registered nurse licensed under chapter 464 as frequently as necessary to assure safe and adequate care, but not less frequently than once every 62 days.

(5) A home health agency must provide at least one home health service to patients for whom it has agreed to provide care. Services provided by others under contractual arrangements to a home health agency's patients must be monitored and controlled by the home health agency.

(6) The services provided by a home health agency, directly or under contract, must be supervised and coordinated in accordance with the plan of care.

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency shall adopt rules providing for the implementation of such orders. Home health personnel and agencies shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency.

Section 6. Present subsection (8) of section 400.6095, Florida Statutes, is renumbered as subsection (9), and a new subsection (8) is added to that section, to read:

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

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The department shall adopt rules providing for the implementation of such orders. Hospice staff shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the department.

Section 7. Present subsection (3) of section 400.621, Florida Statutes, 1998 Supplement, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

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

(3) The department shall adopt rules providing for the implementation of orders not to resuscitate. The provider may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The provider shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the department.

Section 8. Subsection (3) of section 401.45, Florida Statutes, is amended and subsection (5) is added to that section, to read:

401.45 Denial of emergency treatment; civil liability.—

~~(3)(a) Resuscitation or life-prolonging techniques may be withheld or withdrawn from a patient by an emergency medical technician or paramedic if evidence of an order not to resuscitate by the patient's physician is presented to the emergency medical technician or paramedic in a manner provided by rule of the department.~~

(b) Any licensee, physician, medical director, or emergency medical technician or paramedic who acts under the direction of a medical director is not subject to criminal prosecution or civil liability, and has not engaged in negligent or unprofessional conduct, as a result of the withholding or withdrawal of resuscitation ~~or life-prolonging techniques~~ from a patient pursuant to this subsection and rules adopted by the department.

(c) The department, in consultation with the Department of Elderly Affairs and the Agency for Health Care Administration, shall develop a standardized do-not-resuscitate identification system with devices that signify, when carried or worn, that the possessor is a patient for whom a physician has issued an order not to administer cardiopulmonary resuscitation. The department may charge a reasonable fee to cover the cost of producing and distributing such identification devices. Use of such devices shall be voluntary.

(5) The department shall adopt and enforce all rules necessary to implement this section.

Section 9. Subsection (9) is added to section 455.604, Florida Statutes, 1998 Supplement, to read:

455.604 Requirement for instruction for certain licensees on human immunodeficiency virus and acquired immune deficiency syndrome.—

(9) In lieu of completing a course as required in subsection (1), the licensee may complete a course in end-of-life care and palliative health care, so long as the licensee completed an approved AIDS/HIV course in the immediately preceding biennium.

Section 10. Subsection (4) is added to section 458.319, Florida Statutes, 1998 Supplement, to read:

458.319 Renewal of license.—

(4) Notwithstanding the provisions of s. 455.604, a physician may complete continuing education on end-of-life care and palliative health care in lieu of continuing education in AIDS/HIV, if that physician has completed the AIDS/HIV continuing education in the immediately preceding biennium.

Section 11. Subsection (5) is added to section 459.008, Florida Statutes, 1998 Supplement, to read:

459.008 Renewal of licenses and certificates.—

(5) Notwithstanding the provisions of s. 455.604, an osteopathic physician may complete continuing education on end-of-life and palliative health care in lieu of continuing education in AIDS/HIV, if that physician has completed the AIDS/HIV continuing education in the immediately preceding biennium.

Section 12. Section 732.912, Florida Statutes, 1998 Supplement, is amended to read:

732.912 Persons who may make an anatomical gift.—

(1) Any person who may make a will may give all or part of his or her body for any purpose specified in s. 732.910, the gift to take effect upon death. An anatomical gift made by an adult donor and not revoked by the donor as provided in s. 732.916 is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(2) If the decedent has ~~not~~ executed an agreement concerning an anatomical gift, including signing an organ and tissue donor card, expressing his or her wish to donate in a living will or advance directive, or signifying his or her intent to donate on his or her driver's license or in some other written form has indicated his or her wish to make an anatomical gift, a member of one of the classes of persons listed below, in the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, the surrogate designated by the decedent pursuant to part II of chapter 765 may give all or any part of the decedent's body for any purpose specified in s. 732.910.;

(3) If the decedent has not executed an agreement concerning an anatomical gift or designated a surrogate pursuant to part II of chapter 765 to make an anatomical gift pursuant to the conditions of subsection (2), a member of one of the classes of persons listed below, in the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in s. 732.910:

- (a) The spouse of the decedent;
- (b) An adult son or daughter of the decedent;
- (c) Either parent of the decedent;
- (d) An adult brother or sister of the decedent;
- (e) A grandparent of the decedent;
- (f) A guardian of the person of the decedent at the time of his or her death; or
- (g) A representative ad litem who shall be appointed by a court of competent jurisdiction forthwith upon a petition heard ex parte filed by any person, which representative ad litem shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent's body and that no evidence exists of the decedent's having made a communication expressing a desire that his or her body or body parts not be donated upon death;

but no gift shall be made by the spouse if any adult son or daughter objects, and provided that those of higher priority, if they are reasonably available, have been contacted and made aware of the proposed gift, and further provided that a reasonable search is made to show that there would have been no objection on religious grounds by the decedent.

~~(4)~~(3) If the donee has actual notice of contrary indications by the decedent or, in the case of a spouse making the gift, an objection of an adult son or daughter or actual notice that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

~~(5)~~(4) The person authorized by subsection ~~(3)~~ (2) may make the gift after the decedent's death or immediately before the decedent's death.

~~(6)~~(5) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

~~(7)~~(6) Once the gift has been made, the rights of the donee are paramount to the rights of others, except as provided by s. 732.917.

Section 13. Subsection (5) of section 732.914, Florida Statutes, 1998 Supplement, is amended to read:



732.914 Manner of executing anatomical gifts.—

(5) Any gift by a member of a class designated in s. 732.912~~(3)(2)~~ must be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message.

Section 14. Subsection (3) of section 732.917, Florida Statutes, is amended to read:

732.917 Rights and duties at death.—

(3) The organ procurement organization, tissue bank, or eye bank, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to preserve the potential donor's organs. These procedures do not include the surgical removal of an organ or penetrating any body cavity, specifically for the purpose of donation, until a properly executed donor card or document is located or, if a properly executed donor card or document cannot be located, a person specified in s. 732.912~~(3)(2)~~ has been located, has been notified of the death, and has granted legal permission for the donation.

Section 15. Subsection (2) of section 732.922, Florida Statutes, 1998 Supplement, is amended to read:

732.922 Duty of certain hospital administrators; liability of hospital administrators, organ procurement organizations, eye banks, and tissue banks.—

(2) Where, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or the hospital administrator's designee shall, at or near the time of death, access the organ and tissue donor registry created by s. 732.915(4) to ascertain the existence of a donor card or document executed by the decedent. In the absence of a donor card, organ donation sticker or organ donation imprint on a driver's license, or other properly executed document, the hospital administrator or designee shall request:

(a) The patient's health care surrogate, as permitted in s. 732.912(2); or

(b) If the patient does not have a surrogate, or the surrogate is not reasonably available, any of the persons specified in s. 732.912(3), in the order and manner of priority stated in s. 732.912(3),

to consent to the gift of all or any part of the decedent's body for any purpose specified in this part. Except as provided in s. 732.912, in the absence of actual notice of opposition, consent need only be obtained from the person or persons in the highest priority class reasonably available.

Section 16. Section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.—As used in this chapter:

(1) “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part X of chapter 732 ~~orders not to resuscitate issued pursuant to s. 401.45.~~

(2) “Attending physician” means the primary physician who has responsibility for the treatment and care of the patient.

(3) “Close personal friend” means any person 18 years of age or older who has exhibited special care and concern for the patient, and who presents an affidavit to the health care facility or to the attending or treating physician stating that he or she is a friend of the patient; is willing and able to become involved in the patient’s health care; and has maintained such regular contact with the patient so as to be familiar with the patient’s activities, health, and religious or moral beliefs.

(4) “End-stage condition” means a condition that is caused by injury, disease, or illness which has resulted in severe and permanent deterioration, indicated by incapacity and complete physical dependency, and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.

(5)(4) “Health care decision” means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures.

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

(c) 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.

(d) The decision to make an anatomical gift pursuant to part X of chapter 732.

(6)(5) “Health care facility” means a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394.

(7)(6) “Health care provider” or “provider” means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession.

(8)(7) “Incapacity” or “incompetent” means the patient is physically or mentally unable to communicate a willful and knowing health care decision. For the purposes of making an anatomical gift, the term also includes a patient who is deceased.

(9)(8) “Informed consent” means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved

to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or alternative procedures, and to make a knowing health care decision without coercion or undue influence.

(10)(9) “Life-prolonging procedure” means any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function.  
which:

~~(a) Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and~~

~~(b) When applied to a patient in a terminal condition, serves only to prolong the process of dying.~~

The term “~~life-prolonging procedure~~” does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

(11)(40) “Living will” or “declaration” means:

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

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

(12) “Persistent vegetative state” means a permanent and irreversible condition of unconsciousness in which there is:

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

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

(13)(41) “Physician” means a person licensed pursuant to chapter 458 or chapter 459.

(14)(42) “Principal” means a competent adult executing an advance directive and on whose behalf health care decisions are to be made.

(15)(43) “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 to make health care decisions for such individual.

(16)(44) “Surrogate” means any competent adult expressly designated by a principal to make health care decisions on behalf of the principal upon the principal’s incapacity.

(17)(45) “Terminal condition” means:

(a) a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death;~~; or~~

~~(b) A persistent vegetative state characterized by a permanent and irreversible condition of unconsciousness in which there is:~~

- ~~1. The absence of voluntary action or cognitive behavior of any kind; and~~
- ~~2. An inability to communicate or interact purposefully with the environment.~~

~~(16) "Treating physician" means the physician who has treated or is treating the patient for any condition directly related to the condition resulting in the patient's incapacity.~~

Section 17. Subsection (3) of section 765.102, Florida Statutes, is amended to read:

765.102 Legislative findings and intent.—

(3) The Legislature recognizes further finds that for some the administration of life-prolonging medical procedures may result in the artificial prolongation of life for a person with a terminal condition may secure for him or her only a precarious and burdensome existence, while providing nothing medically necessary or beneficial to the patient. In order to ensure that the rights and intentions of a person with such a condition may be respected even after he or she is no longer able to participate actively in decisions concerning himself or herself, and to encourage communication among such patient, his or her family, and his or her physician, the Legislature declares that the laws of this state recognize the right of a competent adult to make an advance directive instructing his or her physician to provide, withhold, or withdraw life-prolonging procedures, or to designate another to make the treatment decision for him or her in the event that such person should become incapacitated and unable to personally direct his or her medical care be found to be incompetent and suffering from a terminal condition.

Section 18. Section 765.103, Florida Statutes, is amended to read:

765.103 Existing advance directives.—Any advance directive made prior to ~~October 1, 1999, April 10, 1992,~~ shall be given effect as executed, as provided in this chapter provided such directive was legally effective when written.

Section 19. Section 765.104, Florida Statutes, is amended to read:

765.104 Amendment or revocation.—

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

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

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

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

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

(2) Unless otherwise provided in the advance directive or in an order of dissolution or annulment of marriage, the dissolution or annulment of marriage of the principal revokes the designation of the principal's former spouse as a surrogate.

(3) Any such amendment or revocation will be effective when it is communicated to the surrogate, health care provider, or health care facility. No civil or criminal liability shall be imposed upon any person for a failure to act upon an amendment or a revocation unless that person has actual knowledge of such amendment or revocation.

Section 20. Section 765.107, Florida Statutes, is amended to read:

765.107 Construction.—

(1) This chapter shall not be construed to repeal by implication any provision of s. 766.103, the Florida Medical Consent Law. For all purposes, the Florida Medical Consent Law shall be considered an alternative to provisions of this section.

(2) Procedures provided in this chapter permitting the withholding or withdrawal of life-prolonging procedures do not apply to a person who never had capacity to designate a health care surrogate or execute a living will.

Section 21. Section 765.110, Florida Statutes, is amended to read:

765.110 Health care facilities and providers; discipline.—

(1) A health care facility, pursuant to Pub. L. No. 101-508, ss. 4206 and 4751, shall provide to each patient written information concerning the individual's rights concerning advance directives and the health care facility's policies respecting the implementation of such rights, and shall document in the patient's medical records whether or not the individual has executed an advance directive.

(2) A health care provider or health care facility may not require a patient to execute an advance directive or to execute a new advance directive using the facility's or provider's forms. The patient's advance directives shall travel with the patient as part of the patient's medical record.

~~(3)~~(2) A health care provider or health care facility shall be subject to professional discipline and revocation of license or certification, and a fine of not more than ~~\$1,000~~ \$500 per incident, or both, if the health care provider or health care facility, as a condition of treatment or admission, requires an individual to execute or waive an advance directive.

(4)(3) The Department of Elderly Affairs for hospices and, in consultation with the Department of Elderly Affairs, the Department of Health for health care providers, and Rehabilitative Services and the Agency for Health Care Administration for hospitals, nursing homes, home health agencies, and health maintenance organizations, and the Department of Children and Family Services for facilities subject to part I of chapter 394 shall adopt rules to implement the provisions of the section.

Section 22. Subsection (2) of section 765.204, Florida Statutes, is amended to read:

765.204 Capacity of principal; procedure.—

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the attending physician shall evaluate the principal's capacity and, if the physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the attending physician has a question as to whether ~~concludes that~~ the principal lacks such capacity, another physician shall also evaluate the principal's capacity. If the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physician's evaluations in the principal's clinical record and, if the principal has designated a health care surrogate, shall notify such surrogate in writing that her or his authority under the instrument has commenced.

Section 23. Subsection (2) of section 765.205, Florida Statutes, is amended to read:

765.205 Responsibility of the surrogate.—

(2) The surrogate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the principal's health care and may authorize the transfer and admission, discharge, or transfer of the principal to or from a health care facility or other facility or program licensed under chapter 400.

Section 24. Section 765.301, Florida Statutes, is amended to read:

765.301 Short title.—Sections 765.302-765.309 ~~765.302-765.310~~ may be cited as the "Life-Prolonging Procedure Act of Florida."

Section 25. Subsection (1) of section 765.302, Florida Statutes, is amended to read:

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

(1) Any competent adult may, at any time, make a living will or written declaration and direct directing the providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state ~~suffers from a terminal condition.~~ A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a

spouse nor a blood relative of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction.

Section 26. Subsection (1) of section 765.303, Florida Statutes, is amended to read:

765.303 Suggested form of a living will.—

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

Declaration made this .... day of ....., 19 .... I, ....., willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that; if at any time I am both mentally and physically incapacitated

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

or ....(initial).... and I have an end-state condition

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

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

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

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

Name: . . . . .  
Address: . . . . .  
. . . . . Zip Code:.....  
Phone:.....

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

Additional Instructions (optional):  
.....  
.....  
.....

....(Signed)....  
 ....Witness....  
 ....Address....  
 ....Phone....  
 ....Witness....  
 ....Address....  
 ....Phone....

Section 27. Subsection (2) of section 765.304, Florida Statutes, is amended to read:

765.304 Procedure for living will.—

(2) Before proceeding in accordance with the principal's living will, it must be determined that:

(a) The principal does not have a reasonable medical probability of recovering ~~capacity competency~~ so that the right could be exercised directly by the principal.

(b) The principal has a terminal condition, has an end-stage condition, or is in a persistent vegetative state. ~~The principal's physical condition is terminal.~~

(c) Any limitations or conditions expressed orally or in a written declaration have been carefully considered and satisfied.

Section 28. Section 765.305, Florida Statutes, is amended to read:

765.305 Procedure in absence of a living will.—

(1) In the absence of a living will ~~executed pursuant to s. 765.303~~, the decision to withhold or withdraw life-prolonging procedures from a patient may be made by a health care surrogate designated by the patient pursuant to part II unless the designation limits the surrogate's authority to consent to the withholding or withdrawal of life-prolonging procedures.

(2) Before exercising the incompetent patient's right to forego treatment, the surrogate must be satisfied that:

(a) The patient does not have a reasonable medical probability of recovering capacity competency so that the right could be exercised by the patient.

(b) The patient is both mentally and physically incapacitated with no reasonable medical probability of recovery, the patient has an end-stage condition, the patient is in a persistent vegetative state, or the patient's physical condition is terminal.

Section 29. Section 765.306, Florida Statutes, is amended to read:

765.306 Determination of patient condition.—In determining whether the patient has a terminal condition, has an end-stage condition, or is in a persistent vegetative state or may recover mental and physical capacity, or whether a medical condition or limitation referred to in an advance directive



exists, the patient's attending or treating physician and at least one other consulting physician must separately examine the patient. The findings of each such examination must be documented in the patient's medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

Section 30. Section 765.308, Florida Statutes, is renumbered as section 765.1105, Florida Statutes, and amended to read:

765.1105 ~~765.308~~ Transfer of a patient.—

(1) A health care provider or facility that refuses to comply with a patient's advance directive ~~the declaration of a patient~~, or the treatment decision of his or her surrogate, shall make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the directive declaration ~~or treatment decision~~. This chapter does not require a health care provider or facility to commit any act which is contrary to the provider's or facility's moral or ethical beliefs ~~concerning life-prolonging procedures~~, if the patient:

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

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

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

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

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

Section 31. Section 765.310, Florida Statutes, is renumbered as section 765.1115, Florida Statutes, and amended to read:

765.1115 ~~765.310~~ Falsification, forgery, or willful concealment, cancellation, or destruction of directive declaration ~~or revocation or amendment~~; penalties.—

(1) Any person who willfully conceals, cancels, defaces, obliterates, or damages an advance directive ~~a living will~~ without the principal's consent or who falsifies or forges the revocation or amendment of an advance directive ~~a revocation of a living will~~ of another, and who thereby causes life-prolonging procedures to be utilized in contravention of the previously expressed intent of the principal, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who falsifies or forges the advance directive living will of another or who willfully conceals or withholds personal knowledge of the

revocation of an advance directive a declaration, with the intent to cause a withholding or withdrawal of life-prolonging procedures contrary to the wishes of the principal, and who thereby because of such act directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 32. Subsection (3) of section 765.401, Florida Statutes, is amended to read:

765.401 The proxy.—

(3) Before exercising the incapacitated patient's rights to select or decline health care, the proxy must comply with the pertinent provisions applicable to surrogates under this chapter, except that a proxy's decision to withhold or withdraw life-prolonging procedures must either:

(a) Be supported by a written declaration; or

(b) If there is no written declaration, the patient must have a terminal condition, have an end-stage condition, or be in a persistent vegetative state, and the proxy's decision must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent.

Section 33. Section 765.404, Florida Statutes, is created to read:

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

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

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

Section 34. The Department of Elderly Affairs shall convene a workgroup composed of health care professionals, health facilities, attorneys, consumers, clergy, academic institutions, and other interested parties to develop model advance directive forms. The department shall make the forms available to the public. The department may reconvene the workgroup as necessary to modify and update such forms.

Section 35. Except as otherwise expressly provided in this act, this act shall take effect October 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.