CHAPTER 2000-295

Committee Substitute for
Committee Substitute for Senate Bill No. 1890

An act relating to end-of-life care; amending s. 395.1041, F.S.; specifying conditions under which hospital personnel may withhold resuscitation; clarifying intent regarding orders not to resuscitate; amending ss. 400.142, 400.4255, 400.6095, F.S.; clarifying intent regarding orders not to resuscitate issued and acted upon by a physician in a nursing home, assisted living facility, or hospice; amending s. 401.45, F.S.; relating to emergency treatment, requiring use of official form for valid do-not-resuscitate order; specifying required signatures; specifying authorized substitute signatures; amending s. 455.597, F.S., relating to licensure renewal requirements for certain health care professionals; providing for substitution of continuing education programs or courses on end-of-life care and palliative health care for any authorized domestic violence continuing education program or course taken within a specified period; amending s. 765.102, F.S., relating to legislative findings and intent; adding legislative intent to allow a person to plan for future incapacity orally or by executing a document; encouraging health care professionals to rapidly increase their understanding of end-of-life and palliative health care; requiring a statewide, culturally sensitive educational campaign on end-of-life care for the general public; creating s. 765.1103, F.S.; requiring certain health care facilities, health care providers, and health care practitioners to comply with patient requests for pain management and palliative care; amending s. 765.203, F.S.; revising the suggested form for designating a health care surrogate to include reference to anatomical-gift declarations; amending s. 765.204, F.S.; providing a procedure for determining a principal's capacity; revising provisions; providing cross-references; amending s. 765.205, F.S.; providing responsibilities of a health care surrogate with respect to medical records of the principal; amending s. 765.303, F.S.; revising the suggested form for a living will; amending s. 765.305, F.S.; providing a procedure for withholding or withdrawing medical treatment in the absence of a living will; changing the prerequisite circumstances on which a health care surrogate must rely before authorizing withholding or withdrawing of medical treatment for another person; amending s. 765.306, F.S., relating to determination of patient condition; changing the factors that must be evaluated for determining whether a living will may take effect; deleting the requirement for a consulting physician to separately examine the patient; amending s. 765.401, F.S.; providing a proxy to make health care decisions on behalf of a patient; deleting the alternative requirements that a proxy act in accordance with a written declaration or that the patient has certain specified medical conditions before a proxy may consent to withholding or withdrawing life-prolonging procedures; providing cross-references; creating the End-of-Life Care Workgroup; providing membership of the workgroup; requiring a report; providing an effective date.

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

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

395.1041 Access to emergency services and care.—

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

(l) Hospital ~~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. The absence of an order not to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

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

400.142 Emergency medication kits; orders not to resuscitate.—

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. 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. The absence of an order not to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 3. Subsection (3) of section 400.4255, Florida Statutes, is amended to read:

400.4255 Use of personnel; emergency care.—

(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. The absence of an order to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 4. Subsection (8) of section 400.6095, Florida Statutes, is amended to read:

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

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. 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. The absence of an order to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 5. Paragraph (a) of subsection (3) of section 401.45, Florida Statutes, is amended to read:

401.45 Denial of emergency treatment; civil liability.—

(3)(a) Resuscitation 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. An order not to resuscitate, to be valid, must be on the form adopted by rule of the department. The form must be signed by the patient's physician and by the patient or, if the patient is incapacitated, the patient's health care surrogate or proxy as provided in chapter 765, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

Section 6. Section 455.597, Florida Statutes, is amended to read:

455.597 Requirement for instruction on domestic violence.—

(1)(a) The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, chapter 464, chapter 466, chapter 467, chapter 490, or chapter 491 to complete a 1-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, as part of biennial relicensure or recertification. The course shall consist of information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

(b) Each such licensee or certificateholder shall submit confirmation of having completed such course, on a form provided by the board, when submitting fees for each biennial renewal.

(c) The board may approve additional equivalent courses that may be used to satisfy the requirements of paragraph (a). Each licensing board that requires a licensee to complete an educational course pursuant to this subsection may include the hour required for completion of the course in the total hours of continuing education required by law for such profession unless the continuing education requirements for such profession consist of fewer than 30 hours biennially.

(d) Any person holding two or more licenses subject to the provisions of this subsection shall be permitted to show proof of having taken one board-approved course on domestic violence, for purposes of relicensure or recertification for additional licenses.

(e) Failure to comply with the requirements of this subsection shall constitute grounds for disciplinary action under each respective practice act and under s. 455.624(1)(k). In addition to discipline by the board, the licensee shall be required to complete such course.

(2) The board shall also require, as a condition of granting a license under any chapter specified in paragraph (1)(a), that each applicant for initial licensure under the appropriate chapter complete an educational course acceptable to the board on domestic violence which is substantially equivalent to the course required in subsection (1). An applicant who has not taken such course at the time of licensure shall, upon submission of an affidavit showing good cause, be allowed 6 months to complete such requirement.

(3) In lieu of completing a course as required in subsection (1), a licensee or certificateholder may complete a course in end-of-life care and palliative health care, if the licensee or certificateholder has completed an approved domestic violence course in the immediately preceding biennium.

(4)~~(3)~~ Each board may adopt rules to carry out the provisions of this section.

(5)~~(4)~~ Each board shall report to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature by March 1 of each year as to the implementation of and compliance with the requirements of this section.

Section 7. Section 765.102, Florida Statutes, is amended to read:

765.102 Legislative findings and intent.—

(1) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse medical treatment. This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession.

(2) To ensure that such right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature intends that a procedure be established to allow a person to plan for incapacity by executing a document

or orally designating another person to direct the course of his or her medical treatment upon his or her incapacity. Such procedure should be less expensive and less restrictive than guardianship and permit a previously incapacitated person to exercise his or her full right to make health care decisions as soon as the capacity to make such decisions has been regained.

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

(4) The Legislature recognizes the need for all health care professionals to rapidly increase their understanding of end-of-life and palliative health care. Therefore, the Legislature encourages the professional regulatory boards to adopt appropriate standards and guidelines regarding end-of-life care and pain management and encourages educational institutions established to train health care professionals and allied health professionals to implement curricula to train such professionals to provide end-of-life care, including pain management and palliative care.

(5) The Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Health shall jointly create a campaign on end-of-life care for purposes of educating the public. This campaign should include culturally sensitive programs to improve understanding of end-of-life care issues in minority communities.

Section 8. Section 765.1103, Florida Statutes, is created to read:

765.1103 Pain management and palliative care.—

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

(2) When the patient is receiving care as an admitted patient of a facility or a provider or is a subscriber of a health care facility, health care provider, or health care practitioner regulated under chapter 395, chapter 400, chapter 458, chapter 459, chapter 464, or chapter 641, Florida Statutes, such

facility, provider, or practitioner must, when appropriate, comply with a request for pain management or palliative care from a capacitated patient or an incapacitated patient's health care surrogate or proxy, court-appointed guardian as provided in chapter 744, or attorney in fact as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

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

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

DESIGNATION OF HEALTH CARE SURROGATE

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

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

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

Phone:.....

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

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

Phone:.....

I fully understand that this designation will permit my designee to make health care decisions, except for anatomical gifts, unless I have executed an anatomical-gift declaration pursuant to law, and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional): . . . . . .
. . . . . .
. . . . . .
. . . . . .

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

Name: . . . . . .
Name: . . . . . .
. . . . . .
. . . . . .
Signed: . . . . . .
Date: . . . . . .

Witnesses: 1. . . . . .
2. . . . . .

Section 10. 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 the principal lacks capacity, another physician shall also evaluate the principal's capacity, and. 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 medical clinical record. and, If the principal has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced, as provided in s. 765.203 or chapter 709.

Section 11. Section 765.205, Florida Statutes, is amended to read:

765.205 Responsibility of the surrogate.—

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

(a) Have authority to act for the principal and to make all health care decisions for the principal during the principal's incapacity, in accordance with the principal's instructions, unless such authority has been expressly limited by the principal.

(b) Consult expeditiously with appropriate health care providers to provide informed consent, and make only health care decisions for the principal which he or she believes the principal would have made under the circumstances if the principal were capable of making such decisions.

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

(d) Be provided access to the appropriate medical clinical records of the principal.

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

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

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

Section 12. 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 ...., ...(year)..., 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 and

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

or ...(initial)... ~~and~~ I have an end-stage ~~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 13. Subsection (2) of section 765.305, Florida Statutes, is amended to read:

765.305 Procedure in absence of a living will.—

(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 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 14. 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 15. 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 <u>of ss. 765.205 and 765.305</u> ~~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 16. End-of-Life Care Workgroup.—

(1) There is created within the Department of Elderly Affairs the End-of-Life Care Workgroup. The workgroup shall:

(a) Examine reimbursement methodologies for end-of-life care;

(b) Identify end-of-life care standards that will enable all health care providers along the health-care continuum to participate in an excellent system of delivering end-of-life care; and

(c) Develop recommendations for incentives for appropriate end-of-life care.

(2) The workgroup is composed of the Secretary of Elderly Affairs or his or her designee; the Secretary of Health or his or her designee; the Director of Health Care Administration or his or her designee; a member of the Senate, appointed by the President of the Senate; a member of the House of Representatives, appointed by the Speaker of the House of Representatives; and one representative from each of the following organizations: the Florida Hospital Association, the Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Nurses Association, the Florida Acupuncture Association, the Florida Pharmacy Association, Florida Hospices and Palliative Care, Inc., the Florida Health Care Association, the Florida Assisted Living Association, the Florida Association of Homes for the Aging, the Florida Life Care Residents Association, the Florida Association of Insurance and Financial Advisors, and the Florida Association of Health Maintenance Organizations.

(3) The workgroup shall exist for 1 year and shall meet as often as necessary to carry out its duties and responsibilities. Within existing resources, the Department of Elderly Affairs shall provide support services to the workgroup. Workgroup members shall serve without compensation.

(4) The workgroup shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2000.

(5) This section expires May 1, 2001.

Section 17. This act shall take effect upon becoming a law.

Approved by the Governor June 15, 2000.

Filed in Office Secretary of State June 15, 2000.