

CHAPTER 2015-153

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 889

An act relating to health care representatives; amending s. 743.0645, F.S.; conforming provisions to changes made by the act; amending s. 765.101, F.S.; defining terms for purposes of provisions relating to health care advanced directives; revising definitions to conform to changes made by the act; amending s. 765.102, F.S.; revising legislative intent to include reference to surrogate authority that is not dependent on a determination of incapacity; amending s. 765.104, F.S.; conforming provisions to changes made by the act; amending s. 765.105, F.S.; conforming provisions to changes made by the act; providing an exception for a patient who has designated a surrogate to make health care decisions and receive health information without a determination of incapacity being required; amending ss. 765.1103 and 765.1105, F.S.; conforming provisions to changes made by the act; amending s. 765.202, F.S.; revising provisions relating to the designation of health care surrogates; amending s. 765.203, F.S.; revising the suggested form for designation of a health care surrogate; creating s. 765.2035, F.S.; providing for the designation of health care surrogates for minors; providing for designation of an alternate surrogate; providing for decisionmaking if neither the designated surrogate nor the designated alternate surrogate is willing, able, or reasonably available to make health care decisions for the minor on behalf of the minor's principal; authorizing designation of a separate surrogate to consent to mental health treatment for a minor; providing that the health care surrogate authorized to make health care decisions for a minor is also the minor's principal's choice to make decisions regarding mental health treatment for the minor unless provided otherwise; providing that a written designation of a health care surrogate establishes a rebuttable presumption of clear and convincing evidence of the minor's principal's designation of the surrogate; creating s. 765.2038, F.S.; providing a suggested form for the designation of a health care surrogate for a minor; amending s. 765.204, F.S.; specifying that a principal's wishes are controlling while he or she has decisionmaking capacity; providing a duty for providers to communicate to such a principal; conforming provisions to changes made by the act; providing for notification of incapacity of a principal; providing that a health care provider may justifiably rely on decisions made by a surrogate; providing for situations when there are conflicting decisions between surrogate and patient; amending s. 765.205, F.S.; conforming provisions to changes made by the act; amending ss. 765.302, 765.303, 765.304, 765.306, 765.404, and 765.516, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

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

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

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

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

Section 2. 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 or health information, 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 V of this chapter.

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

(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 ~~primary 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 an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

(5) “Health care” means care, services, or supplies related to the health of an individual and includes, but is not limited to, preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the individual’s physical or mental condition or functional status or that affect the structure or function of the individual’s body.

~~(6)~~(5) “Health care decision” means:

(a) 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.

(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 health information ~~all records~~ of the principal reasonably necessary for a health care surrogate or proxy to make decisions involving health care and to apply for benefits.

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

~~(7)~~(6) “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.

~~(8)~~(7) “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.

(9) “Health information” means any information, whether oral or recorded in any form or medium, as defined in 45 C.F.R. s. 160.103 and

the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended, that:

(a) 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

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

~~(10)~~(8) “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.

~~(11)~~(9) “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 procedures, and to make a knowing health care decision without coercion or undue influence.

~~(12)~~(10) “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. The term 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.

~~(13)~~(11) “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.

(14) “Minor’s principal” means a principal who is a natural guardian as defined in s. 744.301(1); legal custodian; or, subject to chapter 744, legal guardian of the person of a minor.

~~(15)~~(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.

~~(16)~~(13) “Physician” means a person licensed pursuant to chapter 458 or chapter 459.

(17) “Primary physician” means a physician designated by an individual or the individual’s surrogate, proxy, or agent under a durable power of attorney as provided in chapter 709, to have primary responsibility for the individual’s health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

~~(18)~~(14) “Principal” means a competent adult executing an advance directive and on whose behalf health care decisions are to be made or health care information is to be received, or both.

~~(19)~~(15) “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.

(20) “Reasonably available” means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient’s health care needs.

~~(21)~~(16) “Surrogate” means any competent adult expressly designated by a principal to make health care decisions and to receive health information. The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information is exercisable immediately without the necessity for a determination of incapacity or only upon the principal’s incapacity as provided in s. 765.204 on behalf of the principal upon the principal’s incapacity.

~~(22)~~(17) “Terminal condition” means 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.

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

765.102 Legislative findings and intent.—

(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 health care or receive his or her health information, or both, 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 also recognizes that some competent adults may want to receive immediate assistance in making health care decisions or accessing health information, or both, without a determination of incapacity. The Legislature intends that a procedure be established to allow a person to designate a surrogate to make health care decisions or receive health information, or both, without the necessity for a determination of incapacity under this chapter.

~~(4)(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 health care treatment decision for him or her in the event that such person should become incapacitated and unable to personally direct his or her health ~~medical~~ care.

Section 4. Subsection (1) of 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.

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

765.105 Review of surrogate or proxy's decision.—

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

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

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

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

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

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

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

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

Section 6. Subsection (1) of section 765.1103, Florida Statutes, is amended 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 primary 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.

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

765.1105 Transfer of a patient.—

(1) A health care provider or facility that refuses to comply with a patient’s advance directive, or the treatment decision of his or her surrogate or proxy, shall make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the directive 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, 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 or proxy 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 or proxy, unless ~~the provisions of s. 765.105 applies~~ apply.

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

765.202 Designation of a health care surrogate.—

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

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

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

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

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

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

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

Address: ...(address)...

Phone: ...(telephone)...

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

Address: ...(address)...

Phone: ...(telephone)...

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:

.....
.....

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

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.

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

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

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

(3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE THIS DESIGNATION; OR

(4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT FROM THIS DESIGNATION.

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. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES, ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERCEDE ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

SIGNATURES: Sign and date the form here:

...(date)... ...(sign your name)...
...(address)... ...(print your name)...
...(city)... ...(state)...

SIGNATURES OF WITNESSES:

<u>First witness</u>	<u>Second witness</u>
...(print name)...	...(print name)...
...(address)...	...(address)...
...(city)... ...(state)...	...(city)... ...(state)...
...(signature of witness)...	...(signature of witness)...
...(date)...	...(date)...

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 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. Section 765.2035, Florida Statutes, is created to read:

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

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

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

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

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

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

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

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

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

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

DESIGNATION OF HEALTH CARE SURROGATE FOR MINOR

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

.....;

.....;

.....;

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

Name: ...(name)...

Address: ...(address)...

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

Phone: ...(telephone)...

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

Name: ...(name)...

Address: ...(address)...

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

Phone: ...(telephone)...

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)...

Name: ...(name)...

Signed: ...(signature)...

Date: ...(date)...

WITNESSES:

1. ...(witness)...

2. ...(witness)...

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

765.204 Capacity of principal; procedure.—

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

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the primary or attending physician shall evaluate the principal's capacity and, if the evaluating physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the evaluating 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 record. 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 health care facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced, as provided in chapter 709 or s. 765.203. If an attending physician determines that the principal lacks capacity, the hospital in which the attending physician made such a determination shall notify the principal's primary physician of the determination.

(3) The surrogate's authority commences either shall commence upon a determination under subsection (2) that the principal lacks capacity or upon a stipulation of such authority pursuant to s. 765.101(21), ~~and~~ Such authority remains shall remain in effect until a determination that the principal has regained such capacity, if the authority commenced as a result of incapacity, or until the authority is revoked, if the authority commenced immediately pursuant to s. 765.101(21). Upon commencement of the surrogate's authority, a surrogate who is not the principal's spouse shall notify the principal's spouse or adult children of the principal's designation of the surrogate. Except if the principal provided immediately exercisable authority to the surrogate pursuant to s. 765.101(21), in the event that the primary or attending physician determines that the principal has regained capacity, the authority of the surrogate shall cease, but recommences shall recommence if the principal subsequently loses capacity as determined pursuant to this section. A health care provider is not liable for relying upon health care decisions made by a surrogate while the principal lacks capacity. At any time when a principal lacks capacity, a health care decision made on the principal's behalf by a surrogate is effective to the same extent as a decision made by the principal. If a principal possesses capacity, health care decisions of the principal take precedence over decisions made by the surrogate that present a material conflict.

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

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

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

Section 13. Paragraph (d) of subsection (1) and subsection (2) of section 765.205, Florida Statutes, are 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:

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

(2) The surrogate may authorize the release of health information ~~and medical 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 or chapter 429.

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

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

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

Section 15. 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 incapacitated and

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

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

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

and if my primary 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 16. Subsection (1) of section 765.304, Florida Statutes, is amended to read:

765.304 Procedure for living will.—

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

Section 17. 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 capacity, or whether a medical condition or limitation referred to in an advance directive exists, the patient's primary 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 18. Section 765.404, Florida Statutes, is amended to read:

765.404 Persistent vegetative state.—For persons in a persistent vegetative state, as determined by the person's primary 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 primary 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 primary 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 19. Paragraph (c) of subsection (1) of section 765.516, Florida Statutes, is amended to read:

765.516 Donor amendment or revocation of anatomical gift.—

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

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

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

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.