CHAPTER 765

HEALTH CARE ADVANCE DIRECTIVES

PART I

GENERAL PROVISIONS

(ss. 765.101-765.113)

PART II

HEALTH CARE SURROGATE

(ss. 765.201-765.205)

PART III

LIFE-PROLONGING PROCEDURES

(ss. 765.301-765.309)

PART IV

ABSENCE OF ADVANCE DIRECTIVE

(ss. 765.401, 765.404)

PART V

ANATOMICAL GIFTS

(ss. 765.510-765.547)

PART I

GENERAL PROVISIONS

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 V of this chapter.

(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 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 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 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 V of this chapter.

(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.

(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.

(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.

(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.

(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.

(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.

(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) "Physician" means a person licensed pursuant to chapter 458 or chapter 459.

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

(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.

(16) "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) "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.

History.—s. 2, ch. 92-199; s. 3, ch. 94-183; s. 46, ch. 96-169; s. 16, ch. 99-331; s. 3, ch. 2001-250; s. 131, ch. 2001-277; s. 104, ch. 2006-1; s. 28, ch. 2006-178.

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 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) For purposes of this chapter:

(a) Palliative care is the comprehensive management of the physical, psychological, social, spiritual, and existential needs of patients. Palliative care is especially suited to the care of persons who have incurable, progressive illnesses.

(b) Palliative care must include:

1. An opportunity to discuss and plan for end-of-life care.

2. Assurance that physical and mental suffering will be carefully attended to.

3. Assurance that preferences for withholding and withdrawing life-sustaining interventions will be honored.

4. Assurance that the personal goals of the dying person will be addressed.

5. Assurance that the dignity of the dying person will be a priority.

6. Assurance that health care providers will not abandon the dying person.

7. Assurance that the burden to family and others will be addressed.

8. Assurance that advance directives for care will be respected regardless of the location of care.

9. Assurance that organizational mechanisms are in place to evaluate the availability and quality of end-of-life, palliative, and hospice care services, including the evaluation of administrative and regulatory barriers.

10. Assurance that necessary health care services will be provided and that relevant reimbursement policies are available.

11. Assurance that the goals expressed in subparagraphs 1.-10. will be accomplished in a culturally appropriate manner.

(6) 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.

History.—s. 2, ch. 92-199; s. 1144, ch. 97-102; s. 17, ch. 99-331; s. 7, ch. 2000-295; s. 4, ch. 2001-250; ss. 132, 133, ch. 2001-277.

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

History.—s. 2, ch. 92-199; s. 18, ch. 99-331.

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 revocation unless that person has actual knowledge of such amendment or revocation.

(4) Any patient for whom a medical proxy has been recognized under s. 765.401 and for whom any previous legal disability that precluded the patient's ability to consent is removed may amend or revoke the recognition of the medical proxy and any uncompleted decision made by that proxy. The amendment or revocation takes effect when it is communicated to the proxy, the health care provider, or the health care facility in writing or, if communicated orally, in the presence of a third person.

History.—s. 2, ch. 92-199; s. 47, ch. 96-169; s. 19, ch. 99-331; s. 12, ch. 2002-195.

765.105 Review of surrogate or proxy's decision.—The patient's family, the health care facility, or the 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:

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

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

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

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

(5) The surrogate or proxy has abused powers; or

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

History.—s. 2, ch. 92-199; s. 4, ch. 94-183.

765.106 Preservation of existing rights.—The provisions of this chapter are cumulative to the existing law regarding an individual's right to consent, or refuse to consent, to medical treatment and do not impair any existing rights or responsibilities which a health care provider, a patient, including a minor, competent or incompetent person, or a patient's family may have under the common law, Federal Constitution, State Constitution, or statutes of this state.

History.—s. 2, ch. 92-199; s. 5, ch. 94-183.

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.

History.—s. 2, ch. 92-199; s. 20, ch. 99-331.

765.108 Effect with respect to insurance.—The making of an advance directive pursuant to the provisions of this chapter shall not affect the sale, procurement, or issuance of any policy of life insurance, nor shall such making of an advance directive be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance will be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured patient in accordance with the provisions of this chapter, nor by any other treatment decision made according to this chapter, notwithstanding any term of the policy to the contrary. A person shall not be required to make an advance directive as a condition for being insured for, or receiving, health care services.

History.—s. 2, ch. 92-199.

765.109 Immunity from liability; weight of proof; presumption.—

(1) A health care facility, provider, or other person who acts under the direction of a health care facility or provider is not subject to criminal prosecution or civil liability, and will not be deemed to have engaged in unprofessional conduct, as a result of carrying out a health care decision made in accordance with the provisions of this chapter. The surrogate or proxy who makes a health care decision on a patient's behalf, pursuant to this chapter, is not subject to criminal prosecution or civil liability for such action.

(2) The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating a health care decision did not, in good faith, comply with the provisions of this chapter.

History.—s. 2, ch. 92-199.

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) 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 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) The Department of Elderly Affairs for hospices and, in consultation with the Department of Elderly Affairs, the Department of Health for health care providers; 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.

History.—s. 2, ch. 92-199; s. 6, ch. 94-183; s. 243, ch. 94-218; s. 48, ch. 96-169; s. 284, ch. 99-8; s. 21, ch. 99-331.

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) Health care providers and practitioners regulated under chapter 458, chapter 459, or chapter 464 must, as appropriate, comply with a request for pain management or palliative care from a patient under their care or, for an incapacitated patient under their care, from a surrogate, proxy, guardian, or other representative permitted to make health care decisions for the incapacitated patient. Facilities regulated under chapter 395, chapter 400, or chapter 429 must comply with the pain management or palliative care measures ordered by the patient's physician.

History.—s. 8, ch. 2000-295; s. 5, ch. 2001-250; s. 134, ch. 2001-277; s. 105, ch. 2006-197.

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, 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 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.

History.—s. 4, ch. 92-199; s. 11, ch. 94-183; s. 1148, ch. 97-102; s. 30, ch. 99-331.

Note.—Former s. 765.308.

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

(1) Any person who willfully conceals, cancels, defaces, obliterates, or damages an advance directive without the principal's consent or who falsifies or forges the revocation or amendment of an advance directive 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 of another or who willfully conceals or withholds personal knowledge of the revocation of an advance directive, 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.

History.—s. 4, ch. 92-199; s. 31, ch. 99-331.

Note.—Former s. 765.310.

765.112 Recognition of advance directive executed in another state.—An advance directive executed in another state in compliance with the law of that state or of this state is validly executed for the purposes of this chapter.

History.—s. 2, ch. 92-199.

765.113 Restrictions on providing consent.—Unless the principal expressly delegates such authority to the surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a surrogate or proxy may not provide consent for:

(1) Abortion, sterilization, electroshock therapy, psychosurgery, experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56, or voluntary admission to a mental health facility.

(2) Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as defined in s. 390.0111(4).

History.—s. 2, ch. 92-199; s. 7, ch. 94-183; s. 87, ch. 99-3.

PART II

HEALTH CARE SURROGATE

765.201 Short title.—Sections 765.202-765.205 may be cited as the "Florida Health Care Surrogate Act."

History.—s. 3, ch. 92-199.

765.202 Designation of a health care surrogate.—

(1) A written document designating a surrogate to make health care decisions for a principal 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.

(2) The person designated as surrogate shall not act as witness to the execution of the document designating the health care surrogate. At least one person who acts as a witness shall be neither the principal's spouse nor blood relative.

(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 unwilling or unable to perform his or her duties. The principal's failure to designate an alternate surrogate shall not invalidate the designation.

(4) If neither the designated surrogate nor the designated alternate surrogate is 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.

(5) A principal may designate a separate surrogate to consent to mental health treatment in the event that the principal is determined by a court to be incompetent to consent to mental

health treatment and a guardian advocate is appointed as provided under s. 394.4598. 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 under this chapter is also the principal's choice to make decisions regarding mental health treatment.

(6) Unless the document states a time of termination, the designation shall remain in effect until revoked by the principal.

(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 principal's designation of the surrogate.

History.—s. 3, ch. 92-199; s. 8, ch. 94-183; s. 49, ch. 96-169; s. 1797, ch. 97-102.

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 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.

History.—s. 3, ch. 92-199; s. 1145, ch. 97-102; s. 9, ch. 2000-295; s. 1, ch. 2008-223.

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. 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 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 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 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.

(3) The surrogate's authority shall commence upon a determination under subsection (2) that the principal lacks capacity, and such authority shall remain in effect until a determination that the principal has regained such capacity. 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. In the event the attending physician determines that the principal has regained capacity, the authority of the surrogate shall cease, but shall recommence if the principal subsequently loses capacity as determined pursuant to this section.

(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.

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

History.—s. 3, ch. 92-199; s. 1146, ch. 97-102; s. 22, ch. 99-331; s. 10, ch. 2000-295; s. 23, ch. 2013-162.

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.

(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. If there is no indication of what the principal would have chosen, the surrogate may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

(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 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 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.

(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.

History.—s. 3, ch. 92-199; s. 9, ch. 94-183; s. 50, ch. 96-169; s. 23, ch. 99-331; s. 11, ch. 2000-295; s. 6, ch. 2001-250; s. 135, ch. 2001-277; s. 106, ch. 2006-197.

PART III

LIFE-PROLONGING PROCEDURES

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

History.—s. 4, ch. 92-199; s. 24, ch. 99-331.

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 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. 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.

(2) It is the responsibility of the principal to provide for notification to her or his 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. 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.

(3) A living will, executed pursuant to this section, establishes a rebuttable presumption of clear and convincing evidence of the principal's wishes.

History.—s. 4, ch. 92-199; s. 1147, ch. 97-102; s. 25, ch. 99-331.

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 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

(2) The principal's failure to designate a surrogate shall not invalidate the living will.

History.—s. 4, ch. 92-199; s. 35, ch. 99-6; s. 26, ch. 99-331; s. 12, ch. 2000-295.

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 attending physician may proceed as directed by the principal in the living will. In the event of a dispute or disagreement concerning the attending physician's decision to withhold or withdraw life-prolonging

procedures, the 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 attending physician's decision to withhold or withdraw life-prolonging procedures, the attending physician may proceed in accordance with the principal's instructions.

(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 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.

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

History.—s. 4, ch. 92-199; s. 10, ch. 94-183; s. 27, ch. 99-331.

765.305 Procedure in absence of a living will.—

(1) In the absence of a living will, 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 so that the right could be exercised by the patient.

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

History.—s. 4, ch. 92-199; s. 28, ch. 99-331; s. 13, ch. 2000-295.

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 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.

History.—s. 4, ch. 92-199; s. 13, ch. 94-183; s. 29, ch. 99-331; s. 14, ch. 2000-295.

765.309 Mercy killing or euthanasia not authorized; suicide distinguished.—

(1) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(2) The withholding or withdrawal of life-prolonging procedures from a patient in accordance with any provision of this chapter does not, for any purpose, constitute a suicide.

History.—s. 4, ch. 92-199.

PART IV

ABSENCE OF ADVANCE DIRECTIVE

765.401 The proxy.—

(1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

(a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. 393.063, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;

(b) The patient's spouse;

(c) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(d) A parent of the patient;

(e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;

(f) An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or

(g) A close friend of the patient.

(h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the

provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

(2) Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

(3) Before exercising the incapacitated patient's rights to select or decline health care, the proxy must comply with the provisions of ss. 765.205 and 765.305, except that a proxy's decision to withhold or withdraw life-prolonging procedures 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 or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.

(4) Nothing in this section shall be construed to preempt the designation of persons who may consent to the medical care or treatment of minors established pursuant to s. 743.0645.

History.—s. 5, ch. 92-199; s. 12, ch. 94-183; s. 32, ch. 99-331; s. 15, ch. 2000-295; s. 7, ch. 2001-250; s. 136, ch. 2001-277; s. 13, ch. 2002-195; s. 5, ch. 2003-57.

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.

History.—s. 33, ch. 99-331.

PART V

ANATOMICAL GIFTS

765.510 Legislative declaration.—Because of the rapid medical progress in the fields of tissue and organ preservation, transplantation of tissue, and tissue culture, and because it is in the public interest to aid the medical developments in these fields, the Legislature in enacting this part intends to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by facilitating premortem and postmortem

authorizations for donations of tissue and organs. It is the purpose of this part to regulate the gift of a body or parts of a body, the gift to be made after the death of a donor.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 84-264; s. 60, ch. 2001-226.

Note.—Created from former s. 736.21; s. 732.910.

765.511 Definitions.—As used in this part, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Anatomical gift" or "gift" means a donation of all or part of a human body to take effect after the donor's death and to be used for transplantation, therapy, research, or education.

(3) "Bank" or "storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or body parts.

(4) "Death" means the absence of life as determined, in accordance with currently accepted medical standards, by the irreversible cessation of all respiration and circulatory function, or as determined, in accordance with s. 382.009, by the irreversible cessation of the functions of the entire brain, including the brain stem.

(5) "Decedent" means a deceased individual whose body or body parts may be, or are, the source of an anatomical gift.

(6) "Department" means the Department of Highway Safety and Motor Vehicles.

(7) "Disinterested witness" means a witness other than a person listed in s. 765.512(3) or other family member.

(8) "Document of gift" means any of the documents or mechanisms used in making an anatomical gift under s. 765.514.

(9) "Donor" means an individual who makes an anatomical gift of all or part of his or her body.

(10) "Donor registry" means a database that contains records of anatomical gifts and amendments to, or revocations of, such gifts.

(11) "Eye bank" means an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue.

(12) "Guardian" means a person appointed pursuant to chapter 744. The term does not include a guardian ad litem.

(13) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government or a state, or a subdivision thereof, although not required to be licensed under state laws.

(14) "Identification card" means an official identification card issued by a governmental entity, state agency, or subdivision thereof.

(15) “Organ procurement organization” means an entity that is designated as an organ procurement organization by the Secretary of the United States Department of Health and Human Services and that engages in the retrieval, screening, testing, processing, storage, or distribution of human organs.

(16) “Part of the body” or “body part” means an organ, eye, or tissue of a human being. The term does not include the whole body.

(17) “Physician” or “surgeon” means a physician or surgeon licensed to practice under chapter 458 or chapter 459 or similar laws of any state. “Surgeon” includes dental or oral surgeon.

(18) “Procurement” means any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education.

(19) “Procurement organization” means an organ procurement organization, eye bank, or tissue bank.

(20) “Reasonably available” means able to be contacted by a procurement organization in a timely manner without undue effort, and willing and able to act in a manner consistent with existing medical protocols necessary for the making of an anatomical gift.

(21) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Sign” or “signed” means, with the present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or attach to or logically associate an electronic symbol, sound, or process with the record.

(23) “Tissue bank” means an entity that is accredited by the American Association of Tissue Banks or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human tissue.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 973, ch. 97-102; s. 5, ch. 98-68; s. 61, ch. 2001-226; s. 1, ch. 2009-218.

Note.—Created from former s. 736.22; s. 732.911.

765.512 Persons who may make an anatomical gift.—

(1) Any person who may make a will may make an anatomical gift of his or her body.

(a) If the decedent makes an anatomical gift by one of the methods listed in s. 765.514(1), and in the absence of actual notice of contrary indications by the decedent, the document or entry in the donor registry is legally sufficient evidence of the decedent’s informed consent to donate an anatomical gift.

(b) An anatomical gift made by a qualified donor and not revoked by the donor, as provided in s. 765.516, is irrevocable after the donor’s death. A family member, guardian,

representative ad litem, or health care surrogate may not modify, deny, or prevent a donor's wish or intent to make an anatomical gift after the donor's death.

(2) A health care surrogate designated by the decedent pursuant to part II of this chapter may give all or any part of the decedent's body for any purpose specified in s. 765.513 absent actual notice of contrary indications by the decedent.

(3) If the decedent has not made an anatomical gift or designated a health surrogate, a member of one of the classes of persons listed below, in the order of priority listed and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of a prior class, may give all or any part of the decedent's body for any purpose specified in s. 765.513:

(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) An adult grandchild of the decedent;

(f) A grandparent of the decedent;

(g) A close personal friend, as defined in s. 765.101;

(h) A guardian of the person of the decedent at the time of his or her death; or

(i) A representative ad litem appointed by a court of competent jurisdiction upon a petition heard ex parte filed by any person, who 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.

Those of higher priority who are reasonably available must be contacted and made aware of the proposed gift and a reasonable search must be conducted which shows that there would have been no objection to the gift by the decedent.

(4) A donee may not accept an anatomical gift if the donee has actual notice of contrary indications by the donor or actual notice that an anatomical gift by a member of a class is opposed by a member of a prior class.

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

(6) An anatomical gift authorizes:

(a) Any examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The decedent's medical provider, family, or a third party to furnish medical records requested concerning the decedent's medical and social history.

(7) Once the anatomical gift has been made, the rights of the donee are paramount to the rights of others, except as provided by s. 765.517.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 84-264; s. 62, ch. 85-62; s. 5, ch. 95-423; s. 974, ch. 97-102; s. 6, ch. 98-68; s. 12, ch. 99-331; s. 62, ch. 2001-226; s. 2, ch. 2003-46; s. 2, ch. 2008-223; s. 2, ch. 2009-218.

Note.—Created from former s. 736.23; s. 732.912.

765.513 Donees; purposes for which anatomical gifts may be made.—

(1) The following persons or entities may become donees of anatomical gifts of bodies or parts of them for the purposes stated:

(a) Any procurement organization or accredited medical or dental school, college, or university for education, research, therapy, or transplantation.

(b) Any individual specified by name for therapy or transplantation needed by him or her.

(c) The anatomical board or a nontransplant anatomical donation organization, as defined in s. 406.49, for donation of the whole body for medical or dental education or research.

(2) If multiple purposes are set forth in the document of gift but are not set forth in any priority order, the anatomical gift shall be used first for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(3) The Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, gender, national origin, age, physical disability, health status, marital status, or economic status, and such restrictions are void and unenforceable.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 94-305; s. 975, ch. 97-102; s. 7, ch. 98-68; s. 63, ch. 2001-226; s. 3, ch. 2009-218; s. 20, ch. 2013-138.

Note.—Created from former s. 736.24; s. 732.913.

765.514 Manner of making anatomical gifts.—

(1) A person may make an anatomical gift of all or part of his or her body under s. 765.512(1) by:

(a) Signing an organ and tissue donor card.

(b) Registering online with the donor registry.

(c) Signifying an intent to donate on his or her driver's license or identification card issued by the department. Revocation, suspension, expiration, or cancellation of the driver's license or identification card does not invalidate the gift.

(d) Expressing a wish to donate in a living will or other advance directive.

(e) Executing a will that includes a provision indicating that the testator wishes to make an anatomical gift. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.

(f) Expressing a wish to donate in a document other than a will. The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor's presence. If the donor cannot sign, the document may be signed for him or her at the donor's direction and in his or her presence and the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid. The following form of written document is sufficient for any person to make an anatomical gift for the purposes of this part:

UNIFORM DONOR CARD

The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:

I give:

(a) any needed organs, tissues, or eyes;

(b) only the following organs, tissues, or eyes

[Specify the organs, tissues, or eyes]

for the purpose of transplantation, therapy, medical research, or education;

(c) my body for anatomical study if needed. Limitations or special wishes, if any:

(If applicable, list specific donee;

this must be arranged in advance with the donee.)

Signed by the donor and the following witnesses in the presence of each other:

(Signature of donor) (Date of birth of donor)

(Date signed) (City and State)

(Witness) (Witness)

(Address) (Address)

(2) The anatomical gift may be made to a donee listed in s. 765.513, and the donee may be specified by name.

(3) Any anatomical gift by a health care surrogate designated by the decedent pursuant to part II of this chapter or a member of a class designated in s. 765.512(3) 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.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 83-171; s. 2, ch. 94-305; s. 6, ch. 95-423; s. 976, ch. 97-102; s. 8, ch. 98-68; s. 13, ch. 99-331; s. 64, ch. 2001-226; s. 3, ch. 2008-223; s. 4, ch. 2009-218.

Note.—Created from former s. 736.25; s. 732.914.

765.515 Delivery of donor document.—

(1) If an anatomical gift is made pursuant to s. 765.521, the completed donor registration card shall be delivered to the department, and the department must communicate the donor's intent to the donor registry, but delivery is not necessary to the validity of the gift. If the donor withdraws the gift, the records of the department must be updated to reflect such withdrawal, and the department must communicate the withdrawal to the donor registry for the purpose of updating the registry.

(2) If an anatomical gift is made by the donor to a specified donee, the document of gift, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The document of gift may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or to facilitate the donation of organs and tissue after death.

(3) At the request of any interested party upon or after the donor's death, the person in possession shall produce the document of gift for examination.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 2, ch. 83-171; s. 1, ch. 87-372; s. 7, ch. 95-423; s. 33, ch. 96-418; s. 9, ch. 98-68; s. 65, ch. 2001-226; s. 17, ch. 2008-9; s. 4, ch. 2008-223; s. 5, ch. 2009-218.

Note.—Created from former s. 736.26; s. 732.915.

765.5155 Donor registry; education program.—

(1) The Legislature finds that:

(a) There is a shortage of organ and tissue donors in this state willing to provide the organs and tissue that could save lives or enhance the quality of life for many persons.

(b) There is a need to encourage the various minority populations of this state to donate organs and tissue.

(c) A statewide donor registry having an online donor registration process coupled with an enhanced program of donor education will lead to an increase in the number of organ and tissue donors registered in this state, thus affording more persons who are awaiting organ or tissue transplants the opportunity for a full and productive life.

(2) The agency and the department shall jointly contract for the operation of a donor registry and education program. The contractor shall be procured by competitive solicitation pursuant to chapter 287, notwithstanding an exemption under s. 287.057(3)(e). When awarding the contract, priority shall be given to existing nonprofit groups that are based within the state, have expertise working with procurement organizations, have expertise in conducting

statewide organ and tissue donor public education campaigns, and represent the needs of the organ and tissue donation community in the state.

(3) The contractor shall be responsible for:

(a) The development, implementation, and maintenance of an interactive web-based donor registry that, through electronic means, allows for online organ donor registration and the recording of organ and tissue donation records submitted through the driver's license identification program or through other sources.

1. The registry must be maintained in a manner that allows, through electronic and telephonic methods, immediate access to organ and tissue donation records 24 hours a day, 7 days a week.

2. Access to the registry must be through coded and secure means to protect the integrity of the data in the registry.

(b) A continuing program to educate and inform medical professionals, law enforcement agencies and officers, other state and local government employees, high school students, minorities, and the public about the laws of this state relating to anatomical gifts and the need for anatomical gifts.

1. Existing community resources, when available, must be used to support the program and volunteers may assist the program to the maximum extent possible.

2. The contractor shall coordinate with the head of a state agency or other political subdivision of the state, or his or her designee, to establish convenient times, dates, and locations for educating that entity's employees.

(c) Preparing and submitting an annual written report to the agency by December 31 of each year. The report must include:

1. The number of donors on the registry and an analysis of the registration rates by location and method of donation;

2. The characteristics of donors as determined from registry information submitted directly by the donors or by the department;

3. The annual dollar amount of voluntary contributions received by the contractor;

4. A description of the educational campaigns and initiatives implemented during the year and an evaluation of their effectiveness in increasing enrollment on the registry; and

5. An analysis of Florida's registry compared with other states' donor registries.

(4) Costs for the donor registry and education program shall be paid by the agency from the funds deposited into the Health Care Trust Fund pursuant to ss. 320.08047 and 322.08, which are designated for maintaining the donor registry and education program. In addition, the contractor may receive and use voluntary contributions to help support the registry and provide education.

(5) The donor registry established by this section is designated as the "Joshua Abbott Organ and Tissue Registry."

History.—s. 5, ch. 2008-223; s. 6, ch. 2009-218; s. 40, ch. 2010-151; s. 20, ch. 2013-154.

765.51551 Donor registry; public records exemption.—

(1) Information held in the donor registry which identifies a donor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Such information may be disclosed to the following:

(a) Procurement organizations that have been certified by the agency for the purpose of ascertaining or effectuating the existence of a gift under s. 765.522.

(b) Persons engaged in bona fide research if the person agrees to:

1. Submit a research plan to the agency which specifies the exact nature of the information requested and the intended use of the information;

2. Maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;

3. Destroy any confidential records or information obtained after the research is concluded; and

4. Not directly or indirectly contact, for any purpose, any donor or donee.

History.—s. 1, ch. 2008-222; s. 7, ch. 2009-218; s. 1, ch. 2013-65.

765.516 Donor amendment or revocation of anatomical gift.—

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

(a) The execution and delivery to the donee of a signed statement witnessed by at least two adults, at least one of whom is a disinterested witness.

(b) An oral statement that is made in the presence of two persons, one of whom is not a family member, and communicated to the donor's family or attorney or to the donee. An oral statement is effective only if the procurement organization, transplant hospital, or physician or technician has actual notice of the oral amendment or revocation before an incision is made to the decedent's body or an invasive procedure to prepare the recipient has begun.

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

(d) A signed document found on or about the donor's person.

(e) Removing his or her name from the donor registry.

(f) A later-executed document of gift which amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(g) By the destruction or cancellation of the document of gift or the destruction or cancellation of that portion of the document of gift used to make the gift with the intent to revoke the gift.

(2) Any anatomical gift made by a will may also be amended or revoked in the manner provided for the amendment or revocation of wills or as provided in paragraph (1)(a).

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 83-171; s. 8, ch. 95-423; s. 977, ch. 97-102; s. 10, ch. 98-68; s. 66, ch. 2001-226; s. 3, ch. 2003-46; s. 6, ch. 2008-223; s. 8, ch. 2009-218.

Note.—Created from former s. 736.27; s. 732.916.

765.517 Rights and duties at death.—

(1) The donee, pursuant to s. 765.515(2), may accept or reject an anatomical gift. If the donee accepts a gift to be used for research or education purposes, the donee may authorize embalming and the use of the body in funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee shall cause the part to be removed without unnecessary mutilation upon the death of the donor and before or after embalming. After removal of the body part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at the donor's death or, if there is no such physician, the physician who certifies the death. After death, those physicians or the donor's primary care physician may participate in, but may not obstruct, the procedures to preserve the donor's organs or tissues and may not be paid or reimbursed for such participation, nor be associated with or employed by, a procurement organization. These physicians may not participate in the procedures for removing or transplanting a part. However, this subsection does not prevent a physician from serving in a voluntary capacity on the board of directors of a procurement organization or participating on any board, council, commission, or similar body related to the organ and tissue procurement system.

(3) The procurement organizations, 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) It has been verified that the deceased's consent to donate appears in the donor registry or a properly executed document of gift is located; or

(b) If a properly executed document of gift cannot be located or the deceased's consent is not listed in the donor registry, a person specified in s. 765.512(2) or (3) has been located, has been notified of the death, and has granted legal permission for the donation.

(4) All reasonable additional expenses incurred in the procedures to preserve the donor's organs or tissues shall be reimbursed by the procurement organization.

(5) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country, or attempts to do so, may not be subject to any civil action for damages, may not be subject to any criminal proceeding, and may not be subject to discipline, penalty, or liability in any administrative proceeding.

(6) The provisions of this part are subject to the laws of this state prescribing powers and duties with respect to autopsies.

(7) The person making an anatomical gift and the donor's estate are not liable for any injury or damages that result from the making or use of the gift.

(8) In determining whether an anatomical gift has been made, amended, or revoked under this part, a person may rely upon the representation of an individual listed in s. 765.512, relating to the individual's relationship to the donor or prospective donor, unless the person knows that the representation is untrue.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 83-171; s. 9, ch. 95-423; s. 978, ch. 97-102; s. 14, ch. 99-331; s. 67, ch. 2001-226; s. 7, ch. 2008-223; s. 9, ch. 2009-218.

Note.—Created from former s. 736.28; s. 732.917.

765.518 Eye banks.—

(1) Any state, county, district, or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration of sight purposes.

(2) The Department of Education may have prepared, printed, and distributed:

(a) A form document of gift for a gift of the eyes.

(b) An eye bank register consisting of the names of persons who have executed documents for the gift of their eyes.

(c) Wallet cards reciting the document of gift.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 462, ch. 77-147; s. 68, ch. 2001-226.

Note.—Created from former s. 736.29; s. 732.918.

765.5185 Corneal removal by medical examiners.—

(1) In any case in which a patient is in need of corneal tissue for a transplant, a district medical examiner or an appropriately qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s. 765.518, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of the medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.

(2) Neither the district medical examiner nor the medical examiner's appropriately qualified designee nor any eye bank authorized under s. 765.518 may be held liable in any civil or criminal action for failure to obtain consent of the next of kin.

History.—s. 1, ch. 77-172; s. 1, ch. 78-191; s. 979, ch. 97-102; s. 69, ch. 2001-226; s. 111, ch. 2002-1.

Note.—Former s. 732.9185.

765.519 Enucleation of eyes by licensed funeral directors.—With respect to a gift of an eye as provided for in this part, a licensed funeral director as defined in chapter 497 who has completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Florida School of Medicine, the University of South Florida School of Medicine, or the University of Miami School of Medicine may enucleate eyes for gift after proper certification of death by a physician and in compliance with the intent of the gift as defined in this chapter. No properly certified funeral director acting in accordance with the terms of this part shall have any civil or criminal liability for eye enucleation.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 80-157; s. 70, ch. 2001-226; s. 148, ch. 2004-301.

Note.—Created from former s. 736.31; s. 732.919.

765.521 Donations as part of driver license or identification card process.—

(1) The agency and the department shall develop and implement a program encouraging and allowing persons to make anatomical gifts as a part of the process of issuing identification cards and issuing and renewing driver licenses. The donor registration card distributed by the department shall include the information required by the uniform donor card under s. 765.514 and such additional information as determined necessary by the department. The department shall also develop and implement a program to identify donors which includes notations on identification cards, driver licenses, and driver records or such other methods as the department develops to clearly indicate the individual's intent to make an anatomical gift. A notation on an individual's driver license or identification card that the individual intends to make an anatomical gift satisfies all requirements for consent to organ or tissue donation. The agency shall provide the necessary supplies and forms from funds appropriated from general revenue or contributions from interested voluntary, nonprofit organizations. The department shall provide the necessary recordkeeping system from funds appropriated from general revenue. The department and the agency shall incur no liability in connection with the performance of any acts authorized herein.

(2) The department, after consultation with and concurrence by the agency, shall adopt rules to implement the provisions of this section according to the provisions of chapter 120.

(3) Funds expended by the agency to carry out the intent of this section may not be taken from funds appropriated for patient care.

History.—s. 1, ch. 75-71; s. 1, ch. 77-16; s. 463, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 80-134; s. 5, ch. 83-171; s. 10, ch. 95-423; s. 71, ch. 2001-226; s. 8, ch. 2008-223; s. 10, ch. 2009-218.

Note.—Former s. 732.921.

765.522 Duty of hospital administrators; liability of hospital administrators and procurement organizations.—

(1) If, 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, notify the appropriate procurement organization, which shall access the donor registry created by s. 765.5155 or any other donor registry to ascertain the existence of an entry in the registry which has not been revoked or a document of gift executed by the decedent. In the absence of an entry in the donor registry, a document of gift, or other properly executed document, the procurement organization shall request:

(a) The patient's health care surrogate, as authorized in s. 765.512(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. 765.512(3), in the order and manner listed,

to consent to the anatomical gift of the decedent's body for any purpose specified in this part. Except as provided in s. 765.512, 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.

(2) A document of gift is valid if executed in accordance with this part or the laws of the state or country where it was executed and where the person making the anatomical gift was domiciled, has a place of residence, or was a citizen at the time the document of gift was executed.

(3) The agency shall establish rules and guidelines concerning the education of individuals who may be designated to perform the request and the procedures to be used in making the request. The agency is authorized to adopt rules concerning the documentation of the request, where such request is made.

(4) If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.

(5) A document of gift or amendment of an anatomical gift is presumed to be valid unless it was not validly executed or was revoked.

(6) There shall be no civil or criminal liability against any procurement organization certified under s. 765.542 or against any hospital or hospital administrator or designee who complies with the provisions of this part and agency rules or if, in the exercise of reasonable

care, a request for organ donation is inappropriate and the gift is not made according to this part and agency rules.

(7) The hospital administrator or a designee shall, at or near the time of death of a potential donor, directly notify the affiliated organ procurement organization of the potential organ donor. The organ procurement organization must offer any organ from such a donor first to patients on a Florida-based local or state organ sharing transplant list. For the purpose of this subsection, the term "transplant list" includes certain categories of national or regional organ sharing for patients of exceptional need or exceptional match, as approved or mandated by the Organ Procurement and Transplantation Network, or its agent. This notification may not be made to a tissue bank or eye bank in lieu of the organ procurement organization unless the tissue bank or eye bank is also designated as an organ procurement organization.

History.—s. 1, ch. 86-212; s. 2, ch. 87-372; s. 13, ch. 95-423; s. 980, ch. 97-102; s. 12, ch. 98-68; s. 15, ch. 99-331; s. 75, ch. 2001-226; s. 104, ch. 2003-1; s. 9, ch. 2008-223; s. 11, ch. 2009-218.

Note.—Former s. 732.922.

765.53 Organ Transplant Advisory Council; membership; responsibilities.—

(1) A statewide technical Organ Transplant Advisory Council is created within the agency, consisting of twelve members who are physicians licensed under chapter 458 or chapter 459, to represent the interests of the public and the clients of the Department of Health or the agency. A person employed by the agency may not be appointed as a member of the council.

(2) The Secretary of Health Care Administration shall appoint all members of the council to serve a term of 2 years.

(3) The Secretary of Health Care Administration shall fill each vacancy on the council for the balance of the unexpired term. Priority consideration must be given to the appointment of an individual whose primary interest, experience, or expertise lies with clients of the Department of Health and the agency. If an appointment is not made within 120 days after a vacancy occurs on the council, the vacancy must be filled by the majority vote of the council.

(4) The members of the council shall elect a chairperson. The term of the chairperson shall be for 2 years, and an individual may not serve as chairperson for more than two consecutive terms.

(5) Members of the council shall receive no compensation, but shall be reimbursed for per diem and travel expenses by the agency in accordance with s. 112.061 while engaged in the performance of their duties.

(6) The responsibilities of the council shall be to recommend to the agency indications for adult and pediatric organ transplants. The council shall also formulate guidelines and standards for organ transplants and for the development of End Stage Organ Disease and Tissue/Organ

Transplant programs. The recommendations, guidelines, and standards developed by the council are applicable only to those health programs funded through the agency.

(7) The council shall meet at least annually or upon the call of the chairperson or the Secretary of Health Care Administration.

History.—ss. 1, 2, ch. 86-208; ss. 88, 89, ch. 86-220; s. 3, ch. 87-50; s. 8, ch. 91-49; s. 52, ch. 91-297; s. 5, ch. 91-429; s. 3, ch. 94-305; s. 50, ch. 97-101; s. 1, ch. 99-299; s. 6, ch. 2000-305; s. 33, ch. 2003-1; s. 12, ch. 2009-218.

Note.—Former s. 381.602; s. 381.0602.

765.541 Certification of procurement organizations; agency responsibilities.—The agency shall:

(1) Establish a program for the certification of organizations, corporations, or other entities engaged in the procurement of organs, tissues, and eyes for transplantation.

(2) Adopt rules that set forth appropriate standards and guidelines for the program in accordance with ss. 765.541-765.546 and part II of chapter 408. These standards and guidelines must be substantially based on the existing laws of the Federal Government and this state and the existing standards and guidelines of the United Network for Organ Sharing (UNOS), the American Association of Tissue Banks (AATB), the South-Eastern Organ Procurement Foundation (SEOPF), the North American Transplant Coordinators Organization (NATCO), and the Eye Bank Association of America (EBAA). In addition, the agency shall, before adopting these standards and guidelines, seek input from all procurement organizations based in this state.

(3) Collect, keep, and make available to the Governor and the Legislature information regarding the numbers and disposition of organs, tissues, and eyes procured by each certified procurement organization.

(4) Monitor procurement organizations for program compliance.

(5) Provide for the administration of the Organ and Tissue Procurement and Transplantation Advisory Board.

History.—ss. 2, 9, ch. 91-271; s. 5, ch. 91-429; s. 5, ch. 94-305; s. 33, ch. 2003-1; s. 201, ch. 2007-230; s. 13, ch. 2009-218.

Note.—Former s. 381.6021.

765.542 Requirements to engage in organ, tissue, or eye procurement.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 765.541-765.546 and part II of chapter 408 and to entities licensed or certified by or applying for such licensure or certification from the agency pursuant to ss. 765.541-765.546. A person may not engage in the practice of organ procurement in this state without being designated as an organ procurement organization by the Secretary of the United States Department of Health and Human Services and being appropriately certified by the

agency. A physician or organ procurement organization based outside this state is exempt from these certification requirements if:

(a) The organs are procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and

(b) The organs are procured through an agreement of an organ procurement organization certified by the state.

(2) A person may not engage in tissue procurement in this state unless it is appropriately certified as a tissue bank by the agency.

(3) A person may not engage in the practice of eye procurement in this state without being appropriately certified as an eye bank by the agency. Funeral directors or direct disposers who retrieve eye tissue for an eye bank certified under this subsection are exempt from the certification requirements under this subsection.

(4) A limited certificate may be issued to a tissue bank or eye bank, certifying only those components of procurement which the bank has chosen to perform. The agency may issue a limited certificate if it determines that the tissue bank or eye bank is adequately staffed and equipped to operate in conformity with the rules adopted under this section.

History.—s. 3, ch. 91-271; s. 6, ch. 94-305; s. 33, ch. 2003-1; s. 202, ch. 2007-230; s. 14, ch. 2009-218.

Note.—Former s. 381.6022.

765.543 Organ and Tissue Procurement and Transplantation Advisory Board; creation; duties.—

(1) There is hereby created the Organ and Tissue Procurement and Transplantation Advisory Board, which shall consist of 14 members who are appointed by and report directly to the Secretary of Health Care Administration. The membership must be regionally distributed and must include:

(a) Two representatives who have expertise in vascular organ transplant surgery;

(b) Two representatives who have expertise in vascular organ procurement, preservation, and distribution;

(c) Two representatives who have expertise in musculoskeletal tissue transplant surgery;

(d) Two representatives who have expertise in musculoskeletal tissue procurement, processing, and distribution;

(e) A representative who has expertise in eye and cornea transplant surgery;

(f) A representative who has expertise in eye and cornea procurement, processing, and distribution;

(g) A representative who has expertise in bone marrow procurement, processing, and transplantation;

(h) A representative from the Florida Pediatric Society;

(i) A representative from the Florida Society of Pathologists; and

(j) A representative from the Florida Medical Examiners Commission.

(2) The advisory board members may not be compensated for their services except that they may be reimbursed for their travel expenses as provided by law. Members of the board shall be appointed for 3-year terms of office.

(3) The board shall:

(a) Assist the agency in the development of necessary professional qualifications, including, but not limited to, the education, training, and performance of persons engaged in the various facets of organ and tissue procurement, processing, preservation, and distribution for transplantation;

(b) Assist the agency in monitoring the appropriate and legitimate expenses associated with organ and tissue procurement, processing, and distribution for transplantation and developing methodologies to assure the uniform statewide reporting of data to facilitate the accurate and timely evaluation of the organ and tissue procurement and transplantation system;

(c) Provide assistance to the Florida Medical Examiners Commission in the development of appropriate procedures and protocols to ensure the continued improvement in the approval and release of potential donors by the district medical examiners and associate medical examiners;

(d) Develop with and recommend to the agency the necessary procedures and protocols required to assure that all residents of this state have reasonable access to available organ and tissue transplantation therapy and that residents of this state can be reasonably assured that the statewide procurement transplantation system is able to fulfill their organ and tissue requirements within the limits of the available supply and according to the severity of their medical condition and need; and

(e) Develop with and recommend to the agency any changes to the laws of this state or administrative rules or procedures to ensure that the statewide organ and tissue procurement and transplantation system is able to function smoothly, effectively, and efficiently, in accordance with the Federal Anatomical Gift Act and in a manner that assures the residents of this state that no person or entity profits from the altruistic voluntary donation of organs or tissues.

History.—ss. 4, 9, ch. 91-271; s. 5, ch. 91-429; s. 7, ch. 94-305; s. 7, ch. 2000-305; s. 33, ch. 2003-1; s. 15, ch. 2009-218.

Note.—Former s. 381.6023.

765.544 Fees; organ and tissue donor education and procurement.—

(1) In accordance with s. 408.805, an applicant or a certificateholder shall pay a fee for each application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be as follows:

(a) An initial application fee of $1,000 from organ procurement organizations and tissue banks and $500 from eye banks.

(b) Annual fees to be used, in the following order of priority, for the certification program, the advisory board, maintenance of the donor registry, and the organ and tissue donor education program, which may not exceed $35,000 per organization:

1. Each organ procurement organization shall pay the greater of $1,000 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal or operational year.

2. Each tissue procurement organization shall pay the greater of $1,000 or 0.25 percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal or operational year.

3. Each eye bank shall pay the greater of $500 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal or operational year.

(2) The agency shall specify by rule the administrative penalties for the purpose of ensuring adherence to the standards of quality and practice required by this chapter, part II of chapter 408, and applicable rules of the agency for continued certification.

(3)(a) Proceeds from fees, administrative penalties, and surcharges collected pursuant to this section must be deposited into the Health Care Trust Fund.

(b) Moneys deposited in the trust fund pursuant to this section must be used exclusively for the implementation, administration, and operation of the certification program and the advisory board, for maintaining the donor registry, and for organ and tissue donor education.

(4) As used in this section, the term “procurement activity in this state” includes the bringing into this state for processing, storage, distribution, or transplantation of organs or tissues that are initially procured in another state or country.

History.—s. 5, ch. 91-271; s. 8, ch. 94-305; s. 32, ch. 96-418; ss. 3, 4, ch. 98-68; s. 54, ch. 2002-1; s. 33, ch. 2003-1; s. 203, ch. 2007-230; s. 19, ch. 2008-9; s. 16, ch. 2009-218.

Note.—Former s. 381.6024.

765.545 Physician supervision of cadaveric organ and tissue procurement coordinators.—Procurement organizations may employ coordinators who are registered nurses, physician’s assistants, or other medically trained personnel who meet the relevant standards for procurement organizations adopted by the agency under s. 765.541, to assist in the medical management of organ donors or in the surgical procurement of cadaveric organs, tissues, or

eyes for transplantation or research. A coordinator who assists in the medical management of organ donors or in the surgical procurement of cadaveric organs, tissues, or eyes for transplantation or research must do so under the direction and supervision of a physician medical director pursuant to rules and guidelines adopted by the agency. With the exception of organ procurement surgery, this supervision may be indirect supervision. For purposes of this section, the term “indirect supervision” means that the medical director is responsible for the medical actions of the coordinator, that the coordinator is operating under protocols expressly approved by the medical director, and that the medical director or his or her physician designee is always available, in person or by telephone, to provide medical direction, consultation, and advice in cases of organ, tissue, and eye donation and procurement. Although indirect supervision is authorized under this section, direct physician supervision is to be encouraged when appropriate.

History.—s. 6, ch. 91-271; s. 9, ch. 94-305; s. 1035, ch. 95-148; s. 34, ch. 2003-1; s. 17, ch. 2009-218.

Note.—Former s. 381.6025.

765.546 Procurement of cadaveric organs for transplant by out-of-state physicians.—Any physician currently licensed to practice medicine and surgery in the United States may surgically procure in this state cadaveric organs for transplant if:

(1) The organs are being procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and

(2) The organs are being procured through the auspices of an organ procurement organization certified in this state.

History.—s. 7, ch. 91-271; s. 33, ch. 2003-1.

Note.—Former s. 381.6026.

765.547 Cooperation between medical examiner and procurement organization.—

(1) A medical examiner and procurement organization shall cooperate with each other in order to maximize opportunities to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(2) The Florida Medical Examiners Commission shall adopt rules establishing cooperative responsibilities between medical examiners and procurement organizations to facilitate and expedite completion of the medical examiner’s responsibilities under chapter 406 in a manner that will maximize opportunities to recover anatomical gifts.

(3) This part does not supersede any part of chapter 406 relating to medical examiners and the disposition of dead bodies.

History.—s. 18, ch. 2009-218.