

**Estate Planning Council of Greater Miami
Florida Legislative Update 2015
by Hung V. Nguyen**

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¹ See *Joyner v. Florida House of Representative*, 2015 WL 1959113 (Fla. 2015)

Supreme Court of Florida

FRIDAY, MAY 1, 2015

CASE NO.: SC15-813

ARTHENIA L. JOYNER, ET AL. vs. THE FLORIDA HOUSE OF
REPRESENTATIVES, ET AL.

Petitioner(s)

Respondent(s)

The petitioners, certain members of the Florida Senate acting in their capacity as senators, filed an emergency petition for a writ of mandamus, which seeks to compel the Florida House of Representatives to reconvene and continue the 2015 regular legislative session until the conclusion of the session at midnight on May 1, 2015. The petitioners contend that the action of the House in unilaterally adjourning sine die at 1:15 p.m. on April 28, 2015, was contrary to the requirements of article III, section 3(e) of the Florida Constitution.

The petitioners, who filed their petition at approximately 3:20 p.m. on April 30, 2015, have failed to show that in the circumstances presented here, the issuance of a writ of mandamus would produce any beneficial result. See State ex rel. Ostroff v. Pearson, 61 So. 2d 325, 326 (Fla. 1952) (“It is [a] well-established fundamental principle of the law of mandamus that the writ will never be granted in cases when, if issued, it would prove unavailing, or when compliance with it would be nugatory in its effects, or would be without beneficial results and fruitless to the relator.” (citing Campbell v. State ex rel. Garrett, 183 So. 340 (Fla. 1938); Davis ex rel. Taylor v. Crawford, 116 So. 41 (Fla. 1928); Pippin v. State, 74 So. 653 (Fla. 1917))). Accordingly, the emergency petition for writ of mandamus is hereby denied.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and PERRY, JJ., concur.

PARIENTE, J., concurs with an opinion, in which LABARGA, C.J., and LEWIS, QUINCE, and PERRY, JJ., concur.

CANADY, J., concurs with an opinion, in which POLSTON, J., concurs.

PARIENTE, J., concurring.

I agree with the Court's denial of the petition for writ of mandamus. Given that the petition was filed in the afternoon of April 30, 2015, and the 2015 regular legislative session must constitutionally conclude by midnight on May 1, 2015, see art. III, § 3(d), Fla. Const.,¹ there is simply no way to mandate that the entire Florida House of Representatives return to Tallahassee to continue conducting its legislative responsibilities. Issuance of the writ at this time would thus "prove unavailing" and "without beneficial results." State ex rel. Ostroff v. Pearson, 61 So. 2d 325, 326 (Fla. 1952).

I write separately to emphasize that the Court's denial of the petition does not constitute an endorsement of the House's interpretation of the constitutional language in article III, section 3(e), of the Florida Constitution. To the contrary, in my view, the House's unilateral adjournment clearly violated the Constitution.

Article III, section 3(e), provides that "[n]either House shall adjourn for more than seventy-two consecutive hours except pursuant to concurrent resolution." The Constitution specifically contemplates circumstances in which the two legislative houses cannot agree concerning an adjournment of more than seventy-two hours during the established period for a session of the Legislature. In such circumstances, subject to a contrary subsequent agreement of the two houses, the Governor is granted the authority by article III, section 3(f), to "adjourn the session sine die or to any date within the period authorized for such session." Art. III, § 3(f), Fla. Const.

Under the provisions of the Constitution, neither house is permitted unilaterally to adjourn for a period of more than seventy-two consecutive hours. An adjournment of more than seventy-two consecutive hours can be accomplished

1. Article III, section 3(d) allows a regular legislative session to be extended beyond sixty days only "by a three-fifths vote of each house." It does not appear, and the petition does not suggest, that the Court has the authority to mandate the session to continue beyond sixty days, which this year is midnight on May 1.

only by concurrent resolution or by action of the Governor. The House's contrary interpretation—that one house may not unilaterally adjourn during the session for more than seventy-two consecutive hours if it does intend to return, but may unilaterally adjourn sine die for more than seventy-two consecutive hours to conclude the session with no plan to return—is antithetical to the intent of article III, section 3(e). That constitutional provision clearly does not permit one house to adjourn in any fashion for more than seventy-two consecutive hours without the consent of the other house.

As the Supreme Court of Pennsylvania has observed:

The reason of policy for this requirement is not difficult to discern. Because each house is powerless to enact legislation alone, each has a strong interest in insuring that bills passed by it are considered by the other house. The greatest threat to this interest is the possibility that the other house might adjourn, thus disabling itself from the consideration of bills. Protection against this possibility is provided each house by the Constitution in the form of a power to refuse to consent to the adjournment of the other house.

Frame v. Sutherland, 327 A.2d 623, 626-27 (Pa. 1974) (footnote omitted).

Accordingly, the unilateral adjournment sine die by the House on April 28, 2015, at 1:15 p.m.—which resulted in a period of adjournment during the 2015 regular legislative session exceeding seventy-two consecutive hours—violated the plain requirements of the Constitution.

LABARGA, C.J., and LEWIS, QUINCE, and PERRY, JJ., concur.

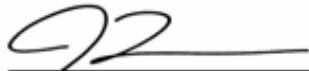
CANADY, J., concurring.

I would deny the petition on the additional ground that the petitioners have failed to establish a clear legal right to compel the presence of the House of Representatives until midnight on May 1, 2015.

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POLSTON, J., concurs.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



cd
Served:

MARK HERRON
JOSEPH BRENNAN DONNELLY
ROBERT J. TELFER, III
JASON PAUL ROJAS
MATTHEW JOSEPH CARSON
DANIEL ELDEN NORDBY



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1
2 An act relating to guardianship proceedings; amending
3 s. 709.2109, F.S.; requiring the filing of a motion
4 before termination or suspension of a power of
5 attorney in proceedings to determine a principal's
6 incapacity or for appointment of a guardian advocate
7 under certain circumstances; amending ss. 744.107 and
8 744.1075, F.S.; authorizing a court to appoint the
9 office of criminal conflict and civil regional counsel
10 as a court monitor in guardianship proceedings;
11 amending s. 744.108, F.S.; providing that fees and
12 costs incurred by an attorney who has rendered
13 services to a ward in compensation proceedings are
14 payable from guardianship assets; providing that
15 expert testimony is not required in proceedings to
16 determine compensation for an attorney or guardian;
17 requiring a person offering expert testimony to
18 provide notice to interested persons; providing that
19 expert witness fees are recoverable by the prevailing
20 interested person; amending s. 744.3025, F.S.;
21 providing that a court may appoint a guardian ad litem
22 to represent a minor if necessary to protect the
23 minor's interest in a settlement; providing that a
24 settlement of a minor's claim is subject to certain
25 confidentiality provisions; amending s. 744.3031,
26 F.S.; requiring notification of an alleged



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27 | incapacitated person and such person's attorney of a
28 | petition for appointment of an emergency temporary
29 | guardian before a hearing on the petition commences;
30 | prohibiting the payment of the emergency temporary
31 | guardian's final fees and his or her final attorney
32 | fees until the final report is filed; amending s.
33 | 744.309, F.S.; providing that certain for-profit
34 | corporations may act as guardian of a person;
35 | providing conditions; requiring the posting and
36 | maintenance of a fiduciary bond; limiting liability;
37 | requiring the corporation to maintain certain
38 | insurance coverage; providing for certain
39 | grandfathered guardianships; amending s. 744.3115,
40 | F.S.; directing the court to specify authority for
41 | health care decisions with respect to a ward's advance
42 | directive; amending s. 744.312, F.S.; prohibiting a
43 | court from giving preference to the appointment of
44 | certain persons as guardians; providing requirements
45 | for the appointment of professional guardians;
46 | amending s. 744.3203, F.S.; providing grounds for
47 | filing a motion for suspension of a power of attorney
48 | before determination of incapacity; providing criteria
49 | for such motion; requiring a hearing under certain
50 | conditions; providing for the award of attorney fees
51 | and costs; amending s. 744.331, F.S.; directing the
52 | court to consider certain factors when determining



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53 | incapacity; requiring that the examining committee be
54 | paid from state funds as court-appointed expert
55 | witnesses if a petition for incapacity is dismissed;
56 | requiring that a petitioner reimburse the state for
57 | such expert witness fees if the court finds the
58 | petition to have been filed in bad faith; amending s.
59 | 744.344, F.S.; providing conditions under which the
60 | court is authorized to appoint an emergency temporary
61 | guardian; amending s. 744.345, F.S.; revising
62 | provisions relating to letters of guardianship;
63 | creating s. 744.359, F.S.; prohibiting abuse, neglect,
64 | or exploitation of a ward by a guardian; requiring
65 | reporting thereof to the Department of Children and
66 | Families central abuse hotline; providing for
67 | interpretation; amending s. 744.361, F.S.; providing
68 | additional powers and duties of a guardian; amending
69 | s. 744.367, F.S.; revising the period during which a
70 | guardian must file an annual guardianship plan with
71 | the court; amending s. 744.369, F.S.; providing for
72 | the continuance of a guardian's authority to act under
73 | an expired annual report under certain circumstances;
74 | amending s. 744.3715, F.S.; providing that an
75 | interested party may petition the court regarding a
76 | guardian's failure to comply with the duties of a
77 | guardian; amending s. 744.464, F.S.; establishing the
78 | burden of proof for determining restoration of



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79 | capacity of a ward in pending guardianship cases;
 80 | requiring a court to advance such cases on the
 81 | calendar; providing applicability; providing an
 82 | effective date.

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

86 | Section 1. Subsection (3) of section 709.2109, Florida
 87 | Statutes, is amended to read:

88 | 709.2109 Termination or suspension of power of attorney or
 89 | agent's authority.—

90 | (3) If any person initiates judicial proceedings to
 91 | determine the principal's incapacity or for the appointment of a
 92 | guardian advocate, the authority granted under the power of
 93 | attorney is suspended until the petition is dismissed or
 94 | withdrawn or the court enters an order authorizing the agent to
 95 | exercise one or more powers granted under the power of attorney.
 96 | However, if the agent named in the power of attorney is the
 97 | principal's parent, spouse, child, or grandchild, the authority
 98 | under the power of attorney is not suspended unless a verified
 99 | motion in accordance with s. 744.3203 is also filed.

100 | (a) If an emergency arises after initiation of proceedings
 101 | to determine incapacity and before adjudication regarding the
 102 | principal's capacity, the agent may petition the court in which
 103 | the proceeding is pending for authorization to exercise a power
 104 | granted under the power of attorney. The petition must set forth



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105 | the nature of the emergency, the property or matter involved,
106 | and the power to be exercised by the agent.

107 | (b) Notwithstanding the provisions of this section, unless
108 | otherwise ordered by the court, a proceeding to determine
109 | incapacity does not affect the authority of the agent to make
110 | health care decisions for the principal, including, but not
111 | limited to, those provided in chapter 765. If the principal has
112 | executed a health care advance directive designating a health
113 | care surrogate, the terms of the directive control if the
114 | directive and the power of attorney are in conflict unless the
115 | power of attorney is later executed and expressly states
116 | otherwise.

117 | Section 2. Subsection (5) is added to section 744.107,
118 | Florida Statutes, to read:

119 | 744.107 Court monitors.—

120 | (5) The court may appoint the office of criminal conflict
121 | and civil regional counsel as monitor if the ward is indigent.

122 | Section 3. Subsection (6) is added to section 744.1075,
123 | Florida Statutes, to read:

124 | 744.1075 Emergency court monitor.—

125 | (6) The court may appoint the office of criminal conflict
126 | and civil regional counsel as monitor if the ward is indigent.

127 | Section 4. Subsections (5) and (8) of section 744.108,
128 | Florida Statutes, are amended, and subsection (9) is added to
129 | that section, to read:

130 | 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees



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131 and expenses.—

132 (5) All petitions for guardian ~~guardian's~~ and attorney
133 ~~attorney's~~ fees and expenses must be accompanied by an itemized
134 description of the services performed for the fees and expenses
135 sought to be recovered.

136 (8) When court proceedings are instituted to review or
137 determine a guardian's or an attorney's fees under subsection
138 (2), such proceedings are part of the guardianship
139 administration process and the costs, including costs and
140 attorney fees for the guardian's attorney, an attorney appointed
141 under s. 744.331(2), or an attorney who has rendered services to
142 the ward, shall be determined by the court and paid from the
143 assets of the guardianship estate unless the court finds the
144 requested compensation under subsection (2) to be substantially
145 unreasonable.

146 (9) The court may determine that a request for
147 compensation by the guardian, the guardian's attorney, a person
148 employed by the guardian, an attorney appointed under s.
149 744.331(2), or an attorney who has rendered services to the
150 ward, is reasonable without receiving expert testimony. A person
151 or party may offer expert testimony for or against a request for
152 compensation after giving notice to interested persons.
153 Reasonable expert witness fees shall be awarded by the court and
154 paid from the assets of the guardianship estate using the
155 standards in subsection (8).

156 Section 5. Section 744.3025, Florida Statutes, is amended



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157 to read:

158 744.3025 Claims of minors.—

159 (1) (a) The court may appoint a guardian ad litem to
160 represent the minor's interest before approving a settlement of
161 the minor's portion of the claim in a any case in which a minor
162 has a claim for personal injury, property damage, wrongful
163 death, or other cause of action in which the gross settlement of
164 the claim exceeds \$15,000 if the court believes a guardian ad
165 litem is necessary to protect the minor's interest.

166 (b) Except as provided in paragraph (e), the court shall
167 appoint a guardian ad litem to represent the minor's interest
168 before approving a settlement of the minor's claim in a any case
169 in which the gross settlement involving a minor equals or
170 exceeds \$50,000.

171 (c) The appointment of the guardian ad litem must be
172 without the necessity of bond or notice.

173 (d) The duty of the guardian ad litem is to protect the
174 minor's interests as described in the Florida Probate Rules.

175 (e) A court need not appoint a guardian ad litem for the
176 minor if a guardian of the minor has previously been appointed
177 and that guardian has no potential adverse interest to the
178 minor. ~~A court may appoint a guardian ad litem if the court~~
179 ~~believes a guardian ad litem is necessary to protect the~~
180 ~~interests of the minor.~~

181 (2) Unless waived, the court shall award reasonable fees
182 and costs to the guardian ad litem to be paid out of the gross



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183 proceeds of the settlement.

184 (3) A settlement of a claim pursuant to this section is
185 subject to the confidentiality provisions of this chapter.

186 Section 6. Subsections (2) through (8) of section
187 744.3031, Florida Statutes, are renumbered as subsections (3)
188 through (9), respectively, and a new subsection (2) is added to
189 that section, and present subsection (8) of that section is
190 amended, to read:

191 744.3031 Emergency temporary guardianship.—

192 (2) Notice of filing of the petition for appointment of an
193 emergency temporary guardian and a hearing on the petition must
194 be served on the alleged incapacitated person and on the alleged
195 incapacitated person's attorney at least 24 hours before the
196 hearing on the petition is commenced, unless the petitioner
197 demonstrates that substantial harm to the alleged incapacitated
198 person would occur if the 24-hour notice is given.

199 (9)(8)(a) An emergency temporary guardian shall file a
200 final report no later than 30 days after the expiration of the
201 emergency temporary guardianship.

202 (b) A court may not authorize any payment of the emergency
203 temporary guardian's final fees or the final fees of his or her
204 attorney until the final report is filed.

205 (c)(b) If an emergency temporary guardian is a guardian
206 for the property, the final report must consist of a verified
207 inventory of the property, as provided in s. 744.365, as of the
208 date the letters of emergency temporary guardianship were



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209 issued, a final accounting that gives a full and correct account
210 of the receipts and disbursements of all the property of the
211 ward over which the guardian had control, and a statement of the
212 property of the ward on hand at the end of the emergency
213 temporary guardianship. If the emergency temporary guardian
214 becomes the successor guardian of the property, the final report
215 must satisfy the requirements of the initial guardianship report
216 for the guardian of the property as provided in s. 744.362.

217 (d)~~(e)~~ If the emergency temporary guardian is a guardian
218 of the person, the final report must summarize the activities of
219 the temporary guardian with regard to residential placement,
220 medical condition, mental health and rehabilitative services,
221 and the social condition of the ward to the extent of the
222 authority granted to the temporary guardian in the letters of
223 guardianship. If the emergency temporary guardian becomes the
224 successor guardian of the person, the report must satisfy the
225 requirements of the initial report for a guardian of the person
226 as stated in s. 744.362.

227 (e)~~(d)~~ A copy of the final report of the emergency
228 temporary guardianship shall be served on the successor guardian
229 and the ward.

230 Section 7. Subsection (7) is added to section 744.309,
231 Florida Statutes, to read:

232 744.309 Who may be appointed guardian of a resident ward.—

233 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate
234 guardian existing under the laws of this state is qualified to



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235 act as guardian of a ward if the entity is qualified to do
236 business in the state, is wholly owned by the person who is the
237 circuit's public guardian in the circuit where the corporate
238 guardian is appointed, has met the registration requirements of
239 s. 744.1083, and posts and maintains a bond or insurance policy
240 under paragraph (a).

241 (a) The for-profit corporate guardian must meet one of the
242 following requirements:

243 1. Post and maintain a blanket fiduciary bond of at least
244 \$250,000 with the clerk of the circuit court in the county in
245 which the corporate guardian has its principal place of
246 business. The corporate guardian shall provide proof of the
247 fiduciary bond to the clerks of each additional circuit court in
248 which he or she is serving as a guardian. The bond must cover
249 all wards for whom the corporation has been appointed as a
250 guardian at any given time. The liability of the provider of the
251 bond is limited to the face value of the bond, regardless of the
252 number of wards for whom the corporation is acting as a
253 guardian. The terms of the bond must cover the acts or omissions
254 of each agent or employee of the corporation who has direct
255 contact with the ward or access to the assets of the
256 guardianship. The bond must be payable to the Governor and his
257 or her successors in office and be conditioned on the faithful
258 performance of all duties of a guardian under this chapter. The
259 bond is in lieu of and not in addition to the bond required
260 under s. 744.1085 but is in addition to any bonds required under



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261 s. 744.351. The expenses incurred to satisfy the bonding
262 requirements of this section may not be paid with the assets of
263 any ward; or

264 2. Maintain a liability insurance policy that covers any
265 losses sustained by the guardianship caused by errors,
266 omissions, or any intentional misconduct committed by the
267 corporation's officers or agents. The policy must cover all
268 wards for whom the corporation is acting as a guardian for
269 losses up to \$250,000. The terms of the policy must cover acts
270 or omissions of each agent or employee of the corporation who
271 has direct contact with the ward or access to the assets of the
272 guardianship. The corporate guardian shall provide proof of the
273 policy to the clerk of each circuit court in which he or she is
274 serving as a guardian.

275 (b) A for-profit corporation appointed as guardian before
276 July 1, 2015, is also qualified to serve as a guardian in the
277 particular guardianships in which the corporation has already
278 been appointed as guardian.

279 Section 8. Section 744.3115, Florida Statutes, is amended
280 to read:

281 744.3115 Advance directives for health care.—In each
282 proceeding in which a guardian is appointed under this chapter,
283 the court shall determine whether the ward, prior to incapacity,
284 has executed any valid advance directive under chapter 765. If
285 any advance directive exists, the court shall specify in its
286 order and letters of guardianship what authority, if any, the



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287 guardian shall exercise over the ward with regard to health care
288 decisions and what authority, if any, the surrogate shall
289 continue to exercise over the ward with regard to health care
290 decisions ~~surrogate~~. Pursuant to the grounds listed in s.
291 765.105, the court, upon its own motion, may, with notice to the
292 surrogate and any other appropriate parties, modify or revoke
293 the authority of the surrogate to make health care decisions for
294 the ward. Any order revoking or modifying the authority of the
295 surrogate must be supported by specific written findings of
296 fact. If the court order provides that the guardian is
297 responsible for making health care decisions for the ward, the
298 guardian shall assume the responsibilities of the surrogate
299 which are provided in s. 765.205. For purposes of this section,
300 the term "health care decision" has the same meaning as in s.
301 765.101.

302 Section 9. Section 744.312, Florida Statutes, is reordered
303 and amended to read:

304 744.312 Considerations in appointment of guardian.—

305 (2)~~(1)~~ If a guardian cannot be appointed under subsection
306 (1) ~~Subject to the provisions of subsection (4),~~ the court may
307 appoint any person who is fit and proper and qualified to act as
308 guardian, whether related to the ward or not.

309 ~~(2)~~ The court shall give preference to the appointment of
310 a person who:

311 (a) Is related by blood or marriage to the ward;



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312 (b) Has educational, professional, or business experience
313 relevant to the nature of the services sought to be provided;

314 (c) Has the capacity to manage the financial resources
315 involved; or

316 (d) Has the ability to meet the requirements of the law
317 and the unique needs of the individual case.

318 (3) The court shall also:

319 (a) Consider the wishes expressed by an incapacitated
320 person as to who shall be appointed guardian.†

321 (b) Consider the preference of a minor who is age 14 or
322 over as to who should be appointed guardian.†

323 (c) Consider any person designated as guardian in any will
324 in which the ward is a beneficiary.

325 (d) Consider the wishes of the ward's next of kin, when
326 the ward cannot express a preference.

327 (1)† ~~(4)~~ If the person designated is qualified to serve
328 pursuant to s. 744.309, the court shall appoint any standby
329 guardian or preneed guardian, unless the court determines that
330 appointing such person is contrary to the best interests of the
331 ward.

332 (4) Except when a standby guardian or a preneed guardian
333 is appointed by the court:

334 (a) In each case when a court appoints a professional
335 guardian and does not use a rotation system for such
336 appointment, the court must make specific findings of fact
337 stating why the person was selected as guardian in the



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338 particular matter involved. The findings must reference each of
339 the factors listed in subsections (2) and (3).

340 (b) An emergency temporary guardian who is a professional
341 guardian may not be appointed as the permanent guardian of a
342 ward unless one of the next of kin of the alleged incapacitated
343 person or the ward requests that the professional guardian be
344 appointed as permanent guardian. The court may waive the
345 limitations of this paragraph if the special requirements of the
346 guardianship demand that the court appoint a guardian because he
347 or she has special talent or specific prior experience. The
348 court must make specific findings of fact that justify waiving
349 the limitations of this paragraph.

350 (5) The court may not give preference to the appointment
351 of a person under subsection (2) based solely on the fact that
352 such person was appointed by the court to serve as an emergency
353 temporary guardian.

354 Section 10. Section 744.3203, Florida Statutes, is created
355 to read:

356 744.3203 Suspension of power of attorney before incapacity
357 determination.—

358 (1) At any time during proceedings to determine incapacity
359 but before the entry of an order determining incapacity, the
360 authority granted under an alleged incapacitated person's power
361 of attorney to a parent, spouse, child, or grandchild is
362 suspended when the petitioner files a motion stating that a



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363 specific power of attorney should be suspended for any of the
364 following grounds:

365 (a) The agent's decisions are not in accord with the
366 alleged incapacitated person's known desires.

367 (b) The power of attorney is invalid.

368 (c) The agent has failed to discharge his or her duties or
369 incapacity or illness renders the agent incapable of discharging
370 duties.

371 (d) The agent has abused powers.

372 (e) There is a danger that the property of the alleged
373 incapacitated person may be wasted, misappropriated, or lost
374 unless the authority under the power of attorney is suspended.

375
376 Grounds for suspending a power of attorney do not include the
377 existence of a dispute between the agent and the petitioner
378 which is more appropriate for resolution in some other forum or
379 a legal proceeding other than a guardianship proceeding.

380 (2) The motion must:

381 (a) Identify one or more of the grounds in subsection (1);

382 (b) Include specific statements of fact showing that
383 grounds exist to justify the relief sought; and

384 (c) Include the following statement: "Under penalties of
385 perjury, I declare that I have read the foregoing motion and
386 that the facts stated in it are true to the best of my knowledge
387 and belief," followed by the signature of the petitioner.



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388 (3) Upon the filing of a response to the motion by the
389 agent under the power of attorney, the court shall schedule the
390 motion for an expedited hearing. Unless an emergency arises and
391 the agent's response sets forth the nature of the emergency, the
392 property or matter involved, and the power to be exercised by
393 the agent, notice must be given to all interested persons, the
394 alleged incapacitated person, and the alleged incapacitated
395 person's attorney. The court order following the hearing must
396 set forth what powers the agent is permitted to exercise, if
397 any, pending the outcome of the petition to determine
398 incapacity.

399 (4) In addition to any other remedy authorized by law, a
400 court may award reasonable attorney fees and costs to an agent
401 who successfully challenges the suspension of the power of
402 attorney if the petitioner's motion was made in bad faith.

403 (5) The suspension of authority granted to persons other
404 than a parent, spouse, child, or grandchild shall be as provided
405 in s. 709.2109.

406 Section 11. Subsection (6) and paragraph (c) of subsection
407 (7) of section 744.331, Florida Statutes, are amended to read:

408 744.331 Procedures to determine incapacity.—

409 (6) ORDER DETERMINING INCAPACITY.—If, after making
410 findings of fact on the basis of clear and convincing evidence,
411 the court finds that a person is incapacitated with respect to
412 the exercise of a particular right, or all rights, the court
413 shall enter a written order determining such incapacity. In



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414 determining incapacity, the court shall consider the person's
415 unique needs and abilities and may only remove those rights that
416 the court finds the person does not have the capacity to
417 exercise. A person is determined to be incapacitated only with
418 respect to those rights specified in the order.

419 (a) The court shall make the following findings:

420 1. The exact nature and scope of the person's
421 incapacities;

422 2. The exact areas in which the person lacks capacity to
423 make informed decisions about care and treatment services or to
424 meet the essential requirements for her or his physical or
425 mental health or safety;

426 3. The specific legal disabilities to which the person is
427 subject; and

428 4. The specific rights that the person is incapable of
429 exercising.

430 (b) When an order determines that a person is incapable of
431 exercising delegable rights, the court must consider and find
432 whether there is an alternative to guardianship that will
433 sufficiently address the problems of the incapacitated person. ~~A~~
434 ~~guardian must be appointed to exercise the incapacitated~~
435 ~~person's delegable rights unless the court finds there is an~~
436 ~~alternative.~~ A guardian may not be appointed if the court finds
437 there is an alternative to guardianship which will sufficiently
438 address the problems of the incapacitated person. If the court
439 finds there is not an alternative to guardianship that



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440 sufficiently addresses the problems of the incapacitated person,
441 a guardian must be appointed to exercise the incapacitated
442 person's delegable rights.

443 (c) In determining that a person is totally incapacitated,
444 the order must contain findings of fact demonstrating that the
445 individual is totally without capacity to care for herself or
446 himself or her or his property.

447 (d) An order adjudicating a person to be incapacitated
448 constitutes proof of such incapacity until further order of the
449 court.

450 (e) After the order determining that the person is
451 incapacitated has been filed with the clerk, it must be served
452 on the incapacitated person. The person is deemed incapacitated
453 only to the extent of the findings of the court. The filing of
454 the order is notice of the incapacity. An incapacitated person
455 retains all rights not specifically removed by the court.

456 (f) Upon the filing of a verified statement by an
457 interested person stating:

458 1. That he or she has a good faith belief that the alleged
459 incapacitated person's trust, trust amendment, or durable power
460 of attorney is invalid; and

461 2. A reasonable factual basis for that belief,
462
463 the trust, trust amendment, or durable power of attorney shall
464 not be deemed to be an alternative to the appointment of a
465 guardian. The appointment of a guardian does not limit the



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466 court's power to determine that certain authority granted by a
467 durable power of attorney is to remain exercisable by the agent
468 ~~attorney in fact~~.

469 (7) FEES.—

470 (c) If the petition is dismissed or denied:~~7~~

471 1. The fees of the examining committee shall be paid upon
472 court order as expert witness fees under s. 29.004(6).

473 2. Costs and attorney ~~attorney's~~ fees of the proceeding
474 may be assessed against the petitioner if the court finds the
475 petition to have been filed in bad faith. The petitioner shall
476 also reimburse the state courts system for any amounts paid
477 under subparagraph 1. upon such a finding.

478 Section 12. Subsection (4) of section 744.344, Florida
479 Statutes, is amended to read:

480 744.344 Order of appointment.—

481 (4) If a petition for the appointment of a guardian has
482 not been filed or ruled upon at the time of the hearing on the
483 petition to determine capacity, the court may appoint an
484 emergency temporary guardian in the manner and for the purposes
485 specified in s. 744.3031.

486 Section 13. Section 744.345, Florida Statutes, is amended
487 to read:

488 744.345 Letters of guardianship.—Letters of guardianship
489 shall be issued to the guardian and shall specify whether the
490 guardianship pertains to the person, or the property, or both,
491 of the ward. The letters must state whether the guardianship is



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492 plenary or limited, and, if limited, the letters must state the
493 powers and duties of the guardian. ~~If the guardianship is~~
494 ~~limited,~~ The letters shall state whether or not and to what
495 extent the guardian is authorized to act on behalf of the ward
496 with regard to any advance directive previously executed by the
497 ward.

498 Section 14. Section 744.359, Florida Statutes, is created
499 to read:

500 744.359 Abuse, neglect, or exploitation by a guardian.—

501 (1) A guardian may not abuse, neglect, or exploit a ward.

502 (2) A guardian has committed exploitation when the
503 guardian:

504 (a) Commits fraud in obtaining appointment as a guardian;

505 (b) Abuses his or her powers; or

506 (c) Wastes, embezzles, or intentionally mismanages the
507 assets of the ward.

508 (3) A person who believes that a guardian is abusing,
509 neglecting, or exploiting a ward shall report the incident to
510 the central abuse hotline of the Department of Children and
511 Families.

512 (4) This section shall be interpreted in conformity with
513 s. 825.103.

514 Section 15. Section 744.361, Florida Statutes, is amended
515 to read:

516 744.361 Powers and duties of guardian.—



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517 (1) The guardian of an incapacitated person is a fiduciary
518 and may exercise only those rights that have been removed from
519 the ward and delegated to the guardian. The guardian of a minor
520 shall exercise the powers of a plenary guardian.

521 (2) The guardian shall act within the scope of the
522 authority granted by the court and as provided by law.

523 (3) The guardian shall act in good faith.

524 (4) A guardian may not act in a manner that is contrary to
525 the ward's best interests under the circumstances.

526 (5) A guardian who has special skills or expertise, or is
527 appointed in reliance upon the guardian's representation that
528 the guardian has special skills or expertise, shall use those
529 special skills or expertise when acting on behalf of the ward.

530 (6)~~(2)~~ The guardian shall file an initial guardianship
531 report in accordance with s. 744.362.

532 (7)~~(3)~~ The guardian shall file a guardianship report
533 annually in accordance with s. 744.367.

534 (8)~~(4)~~ The guardian of the person shall implement the
535 guardianship plan.

536 (9)~~(5)~~ When two or more guardians have been appointed, the
537 guardians shall consult with each other.

538 (10)~~(6)~~ A guardian who is given authority over any
539 property of the ward shall:

540 (a) Protect and preserve the property and invest it
541 prudently as provided in chapter 518, apply it as provided in s.



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542 | 744.397, and keep clear, distinct, and accurate records of the
 543 | administration of the ward's property ~~account for it faithfully.~~

544 | (b) Perform all other duties required of him or her by
 545 | law.

546 | (c) At the termination of the guardianship, deliver the
 547 | property of the ward to the person lawfully entitled to it.

548 | (11)~~(7)~~ The guardian shall observe the standards in
 549 | dealing with the guardianship property that would be observed by
 550 | a prudent person dealing with the property of another, ~~and, if~~
 551 | ~~the guardian has special skills or is named guardian on the~~
 552 | ~~basis of representations of special skills or expertise, he or~~
 553 | ~~she is under a duty to use those skills.~~

554 | (12)~~(8)~~ The guardian, if authorized by the court, shall
 555 | take possession of all of the ward's property and of the rents,
 556 | income, issues, and profits from it, whether accruing before or
 557 | after the guardian's appointment, and of the proceeds arising
 558 | from the sale, lease, or mortgage of the property or of any
 559 | part. All of the property and the rents, income, issues, and
 560 | profits from it are assets in the hands of the guardian for the
 561 | payment of debts, taxes, claims, charges, and expenses of the
 562 | guardianship and for the care, support, maintenance, and
 563 | education of the ward or the ward's dependents, as provided for
 564 | under the terms of the guardianship plan or by law.

565 | (13) Recognizing that every individual has unique needs
 566 | and abilities, a guardian who is given authority over a ward's
 567 | person shall, as appropriate under the circumstances:



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568 (a) Consider the expressed desires of the ward as known by
569 the guardian when making decisions that affect the ward.

570 (b) Allow the ward to maintain contact with family and
571 friends unless the guardian believes that such contact may cause
572 harm to the ward.

573 (c) Not restrict the physical liberty of the ward more
574 than reasonably necessary to protect the ward or another person
575 from serious physical injury, illness, or disease.

576 (d) Assist the ward in developing or regaining capacity,
577 if medically possible.

578 (e) Notify the court if the guardian believes that the
579 ward has regained capacity and that one or more of the rights
580 that have been removed should be restored to the ward.

581 (f) To the extent applicable, make provision for the
582 medical, mental, rehabilitative, or personal care services for
583 the welfare of the ward.

584 (g) To the extent applicable, acquire a clear
585 understanding of the risks and benefits of a recommended course
586 of health care treatment before making a health care decision.

587 (h) Evaluate the ward's medical and health care options,
588 financial resources, and desires when making residential
589 decisions that are best suited for the current needs of the
590 ward.

591 (i) Advocate on behalf of the ward in institutional and
592 other residential settings and regarding access to home and
593 community-based services.



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594 (j) When not inconsistent with the person's goals, needs,
595 and preferences, acquire an understanding of the available
596 residential options and give priority to home and other
597 community-based services and settings.

598 ~~(14)(9)~~ A professional guardian must ensure that each of
599 the guardian's wards is personally visited by the guardian or
600 one of the guardian's professional staff at least once each
601 calendar quarter. During the personal visit, the guardian or the
602 guardian's professional staff person shall assess:

603 (a) The ward's physical appearance and condition.

604 (b) The appropriateness of the ward's current living
605 situation.

606 (c) The need for any additional services and the necessity
607 for continuation of existing services, taking into consideration
608 all aspects of social, psychological, educational, direct
609 service, health, and personal care needs.

610 (d) The nature and extent of visitation and communication
611 with the ward's family and friends.

612

613 This subsection does not apply to a professional guardian who
614 has been appointed only as guardian of the property.

615 Section 16. Subsection (1) of section 744.367, Florida
616 Statutes, is amended to read:

617 744.367 Duty to file annual guardianship report.—

618 (1) Unless the court requires filing on a calendar-year
619 basis, each guardian of the person shall file with the court an



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620 annual guardianship plan at least 60 days, but no more than
621 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary
622 month that the letters of guardianship were signed, and the plan
623 must cover the coming fiscal year, ending on the last day in
624 such anniversary month. If the court requires calendar-year
625 filing, the guardianship plan for the forthcoming calendar year
626 must be filed on or after September 1 but no later than December
627 1 of the current year ~~before April 1 of each year.~~

628 Section 17. Subsection (8) of section 744.369, Florida
629 Statutes, is amended to read:

630 744.369 Judicial review of guardianship reports.—

631 (8) The approved report constitutes the authority for the
632 guardian to act in the forthcoming year. The powers of the
633 guardian are limited by the terms of the report. The annual
634 report may not grant additional authority to the guardian
635 without a hearing, as provided for in s. 744.331, to determine
636 that the ward is incapacitated to act in that matter. Unless the
637 court orders otherwise, the guardian may continue to act under
638 authority of the last-approved report until the forthcoming
639 year's report is approved.

640 Section 18. Subsection (1) of section 744.3715, Florida
641 Statutes, is amended to read:

642 744.3715 Petition for interim judicial review.—

643 (1) At any time, any interested person, including the
644 ward, may petition the court for review alleging that the
645 guardian is not complying with the guardianship plan, ~~or~~ is



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646 | exceeding his or her authority under the guardianship plan, is
647 | acting in a manner contrary to s. 744.361, is denying visitation
648 | between the ward and his or her relatives in violation of s.
649 | 744.361(13), or ~~and the guardian~~ is not acting in the best
650 | interest of the ward. The petition for review must state the
651 | nature of the objection to the guardian's action or proposed
652 | action. Upon the filing of any such petition, the court shall
653 | review the petition and act upon it expeditiously.

654 | Section 19. Paragraphs (a) and (b) of subsection (3) of
655 | section 744.464, Florida Statutes, are amended, and subsection
656 | (4) is added to that section, to read:

657 | 744.464 Restoration to capacity.—

658 | (3) ORDER OF RESTORATION.—

659 | (a) If no objections are filed, and the court is satisfied
660 | that with the medical examination establishes by a preponderance
661 | of the evidence that restoration of all or some of the ward's
662 | rights is appropriate, the court shall enter an order of
663 | restoration of capacity, restoring all or some of the rights
664 | which were removed from the ward in accordance with those
665 | findings. ~~The order must be issued within 30 days after the~~
666 | ~~medical report is filed.~~

667 | (b) At the conclusion of a hearing, conducted pursuant to
668 | s. 744.1095, the court shall make specific findings of fact and,
669 | based on a preponderance of the evidence, enter an order either
670 | denying the suggestion of capacity or restoring all or some of
671 | the rights which were removed from the ward. The ward has the



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672 burden of proving by a preponderance of the evidence that the
 673 restoration of capacity is warranted.

674 (4) TIMELINESS OF HEARING.—The court shall give priority
 675 to any suggestion of capacity and shall advance the cause on the
 676 calendar.

677 Section 20. Sections 709.2109 and 744.3203, Florida
 678 Statutes, as created by this act, apply to all proceedings filed
 679 on or after July 1, 2015. The amendments made by this act to ss.
 680 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,
 681 744.3115, 744.312, 744.331, 744.344, 744.345, 744.359, 744.361,
 682 744.367, 744.369, 744.3715, and 744.464, Florida Statutes, apply
 683 to all proceedings pending on July 1, 2015.

684 Section 21. This act shall take effect July 1, 2015.



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1
2 An act relating to health care representatives;
3 amending s. 743.0645, F.S.; conforming provisions to
4 changes made by the act; amending s. 765.101, F.S.;
5 defining terms for purposes of provisions relating to
6 health care advanced directives; revising definitions
7 to conform to changes made by the act; amending s.
8 765.102, F.S.; revising legislative intent to include
9 reference to surrogate authority that is not dependent
10 on a determination of incapacity; amending s. 765.104,
11 F.S.; conforming provisions to changes made by the
12 act; amending s. 765.105, F.S.; conforming provisions
13 to changes made by the act; providing an exception for
14 a patient who has designated a surrogate to make
15 health care decisions and receive health information
16 without a determination of incapacity being required;
17 amending ss. 765.1103 and 765.1105, F.S.; conforming
18 provisions to changes made by the act; amending s.
19 765.202, F.S.; revising provisions relating to the
20 designation of health care surrogates; amending s.
21 765.203, F.S.; revising the suggested form for
22 designation of a health care surrogate; creating s.
23 765.2035, F.S.; providing for the designation of
24 health care surrogates for minors; providing for
25 designation of an alternate surrogate; providing for
26 decisionmaking if neither the designated surrogate nor



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27 | the designated alternate surrogate is willing, able,
28 | or reasonably available to make health care decisions
29 | for the minor on behalf of the minor's principal;
30 | authorizing designation of a separate surrogate to
31 | consent to mental health treatment for a minor;
32 | providing that the health care surrogate authorized to
33 | make health care decisions for a minor is also the
34 | minor's principal's choice to make decisions regarding
35 | mental health treatment for the minor unless provided
36 | otherwise; providing that a written designation of a
37 | health care surrogate establishes a rebuttable
38 | presumption of clear and convincing evidence of the
39 | minor's principal's designation of the surrogate;
40 | creating s. 765.2038, F.S.; providing a suggested form
41 | for the designation of a health care surrogate for a
42 | minor; amending s. 765.204, F.S.; specifying that a
43 | principal's wishes are controlling while he or she has
44 | decisionmaking capacity; providing a duty for
45 | providers to communicate to such a principal;
46 | conforming provisions to changes made by the act;
47 | providing for notification of incapacity of a
48 | principal; providing that a health care provider may
49 | justifiably rely on decisions made by a surrogate;
50 | providing for situations when there are conflicting
51 | decisions between surrogate and patient; amending s.
52 | 765.205, F.S.; conforming provisions to changes made



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53 | by the act; amending ss. 765.302, 765.303, 765.304,
 54 | 765.306, 765.404, and 765.516, F.S.; conforming
 55 | provisions to changes made by the act; providing an
 56 | effective date.

57 |
 58 | Be It Enacted by the Legislature of the State of Florida:

59 |
 60 | Section 1. Paragraph (b) of subsection (1) and paragraph
 61 | (a) of subsection (2) of section 743.0645, Florida Statutes, are
 62 | amended to read:

63 | 743.0645 Other persons who may consent to medical care or
 64 | treatment of a minor.—

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

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

76 | (2) Any of the following persons, in order of priority
 77 | listed, may consent to the medical care or treatment of a minor
 78 | who is not committed to the Department of Children and Families



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79 | or the Department of Juvenile Justice or in their custody under
80 | chapter 39, chapter 984, or chapter 985 when, after a reasonable
81 | attempt, a person who has the power to consent as otherwise
82 | provided by law cannot be contacted by the treatment provider
83 | and actual notice to the contrary has not been given to the
84 | provider by that person:

85 | (a) A health care surrogate designated under s. 765.2035
86 | after September 30, 2015, or a person who possesses a power of
87 | attorney to provide medical consent for the minor. A health care
88 | surrogate designation under s. 765.2035 executed after September
89 | 30, 2015, and a power of attorney executed after July 1, 2001,
90 | to provide medical consent for a minor includes the power to
91 | consent to medically necessary surgical and general anesthesia
92 | services for the minor unless such services are excluded by the
93 | individual executing the health care surrogate for a minor or
94 | power of attorney.

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

98 | Section 2. Section 765.101, Florida Statutes, is amended
99 | to read:

100 | 765.101 Definitions.—As used in this chapter:

101 | (1) "Advance directive" means a witnessed written document
102 | or oral statement in which instructions are given by a principal
103 | or in which the principal's desires are expressed concerning any
104 | aspect of the principal's health care or health information, and



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105 includes, but is not limited to, the designation of a health
106 care surrogate, a living will, or an anatomical gift made
107 pursuant to part V of this chapter.

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

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

121 (4) "End-stage condition" means an irreversible condition
122 that is caused by injury, disease, or illness which has resulted
123 in progressively severe and permanent deterioration, and which,
124 to a reasonable degree of medical probability, treatment of the
125 condition would be ineffective.

126 (5) "Health care" means care, services, or supplies
127 related to the health of an individual and includes, but is not
128 limited to, preventive, diagnostic, therapeutic, rehabilitative,
129 maintenance, or palliative care, and counseling, service,
130 assessment, or procedure with respect to the individual's



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131 physical or mental condition or functional status or that affect
 132 the structure or function of the individual's body.

133 (6)~~(5)~~ "Health care decision" means:

134 (a) Informed consent, refusal of consent, or withdrawal of
 135 consent to any and all health care, including life-prolonging
 136 procedures and mental health treatment, unless otherwise stated
 137 in the advance directives.

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

140 (c) The right of access to health information ~~all records~~
 141 of the principal reasonably necessary for a health care
 142 surrogate or proxy to make decisions involving health care and
 143 to apply for benefits.

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

146 (7)~~(6)~~ "Health care facility" means a hospital, nursing
 147 home, hospice, home health agency, or health maintenance
 148 organization licensed in this state, or any facility subject to
 149 part I of chapter 394.

150 (8)~~(7)~~ "Health care provider" or "provider" means any
 151 person licensed, certified, or otherwise authorized by law to
 152 administer health care in the ordinary course of business or
 153 practice of a profession.

154 (9) "Health information" means any information, whether
 155 oral or recorded in any form or medium, as defined in 45 C.F.R.
 156 s. 160.103 and the Health Insurance Portability and



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157 Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended,
158 that:

159 (a) Is created or received by a health care provider,
160 health care facility, health plan, public health authority,
161 employer, life insurer, school or university, or health care
162 clearinghouse; and

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

167 (10)-(8) "Incapacity" or "incompetent" means the patient is
168 physically or mentally unable to communicate a willful and
169 knowing health care decision. For the purposes of making an
170 anatomical gift, the term also includes a patient who is
171 deceased.

172 (11)-(9) "Informed consent" means consent voluntarily given
173 by a person after a sufficient explanation and disclosure of the
174 subject matter involved to enable that person to have a general
175 understanding of the treatment or procedure and the medically
176 acceptable alternatives, including the substantial risks and
177 hazards inherent in the proposed treatment or procedures, and to
178 make a knowing health care decision without coercion or undue
179 influence.

180 (12)-(10) "Life-prolonging procedure" means any medical
181 procedure, treatment, or intervention, including artificially
182 provided sustenance and hydration, which sustains, restores, or



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183 | supplants a spontaneous vital function. The term does not
184 | include the administration of medication or performance of
185 | medical procedure, when such medication or procedure is deemed
186 | necessary to provide comfort care or to alleviate pain.

187 | (13)~~(11)~~ "Living will" or "declaration" means:

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

190 | (b) A witnessed oral statement made by the principal
191 | expressing the principal's instructions concerning life-
192 | prolonging procedures.

193 | (14) "Minor's principal" means a principal who is a
194 | natural guardian as defined in s. 744.301(1); legal custodian;
195 | or, subject to chapter 744, legal guardian of the person of a
196 | minor.

197 | (15)~~(12)~~ "Persistent vegetative state" means a permanent
198 | and irreversible condition of unconsciousness in which there is:

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

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

203 | (16)~~(13)~~ "Physician" means a person licensed pursuant to
204 | chapter 458 or chapter 459.

205 | (17) "Primary physician" means a physician designated by
206 | an individual or the individual's surrogate, proxy, or agent
207 | under a durable power of attorney as provided in chapter 709, to
208 | have primary responsibility for the individual's health care or,



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209 in the absence of a designation or if the designated physician
 210 is not reasonably available, a physician who undertakes the
 211 responsibility.

212 (18)-(14) "Principal" means a competent adult executing an
 213 advance directive and on whose behalf health care decisions are
 214 to be made or health care information is to be received, or
 215 both.

216 (19)-(15) "Proxy" means a competent adult who has not been
 217 expressly designated to make health care decisions for a
 218 particular incapacitated individual, but who, nevertheless, is
 219 authorized pursuant to s. 765.401 to make health care decisions
 220 for such individual.

221 (20) "Reasonably available" means readily able to be
 222 contacted without undue effort and willing and able to act in a
 223 timely manner considering the urgency of the patient's health
 224 care needs.

225 (21)-(16) "Surrogate" means any competent adult expressly
 226 designated by a principal to make health care decisions and to
 227 receive health information. The principal may stipulate whether
 228 the authority of the surrogate to make health care decisions or
 229 to receive health information is exercisable immediately without
 230 the necessity for a determination of incapacity or only upon the
 231 principal's incapacity as provided in s. 765.204 ~~on behalf of~~
 232 ~~the principal upon the principal's incapacity.~~

233 (22)-(17) "Terminal condition" means a condition caused by
 234 injury, disease, or illness from which there is no reasonable



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235 | medical probability of recovery and which, without treatment,
236 | can be expected to cause death.

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

241 | 765.102 Legislative findings and intent.—

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

253 | (3) The Legislature also recognizes that some competent
254 | adults may want to receive immediate assistance in making health
255 | care decisions or accessing health information, or both, without
256 | a determination of incapacity. The Legislature intends that a
257 | procedure be established to allow a person to designate a
258 | surrogate to make health care decisions or receive health
259 | information, or both, without the necessity for a determination
260 | of incapacity under this chapter.



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261 ~~(4)(3)~~ The Legislature recognizes that for some the
262 administration of life-prolonging medical procedures may result
263 in only a precarious and burdensome existence. In order to
264 ensure that the rights and intentions of a person may be
265 respected even after he or she is no longer able to participate
266 actively in decisions concerning himself or herself, and to
267 encourage communication among such patient, his or her family,
268 and his or her physician, the Legislature declares that the laws
269 of this state recognize the right of a competent adult to make
270 an advance directive instructing his or her physician to
271 provide, withhold, or withdraw life-prolonging procedures, or to
272 designate another to make the health care ~~treatment~~ decision for
273 him or her in the event that such person should become
274 incapacitated and unable to personally direct his or her health
275 ~~medical~~ care.

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

278 765.104 Amendment or revocation.—

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

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

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

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



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

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

292 765.105 Review of surrogate or proxy's decision.—

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

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

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

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

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

312 (e) ~~(5)~~ The surrogate or proxy has abused his or her



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313 powers; or

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

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

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

322 765.1103 Pain management and palliative care.—

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

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

337 765.1105 Transfer of a patient.—

338 (1) A health care provider or facility that refuses to



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339 | comply with a patient's advance directive, or the treatment
340 | decision of his or her surrogate or proxy, shall make reasonable
341 | efforts to transfer the patient to another health care provider
342 | or facility that will comply with the directive or treatment
343 | decision. This chapter does not require a health care provider
344 | or facility to commit any act which is contrary to the
345 | provider's or facility's moral or ethical beliefs, if the
346 | patient:

347 | (a) Is not in an emergency condition; and

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

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

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

359 | (b) If the patient has not been transferred, carry out the
360 | wishes of the patient or the patient's surrogate or proxy,
361 | unless ~~the provisions of s. 765.105~~ applies ~~apply~~.

362 | Section 8. Subsections (1), (3), and (4) of section
363 | 765.202, Florida Statutes, are amended, subsections (6) and (7)



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364 are renumbered as subsections (7) and (8), respectively, and a
365 new subsection (6) is added to that section, to read:

366 765.202 Designation of a health care surrogate.—

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

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

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



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

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

396 765.203 Suggested form of designation.—A written
 397 designation of a health care surrogate executed pursuant to this
 398 chapter may, but need not be, in the following form:

399 DESIGNATION OF HEALTH CARE SURROGATE

400 I, ...(name)..., designate as my health care surrogate under s.
 401 765.202, Florida Statutes:

402
 403 Name: ...(name of health care surrogate)...

404 Address: ...(address)...

405 Phone: ...(telephone)...

406
 407 If my health care surrogate is not willing, able, or reasonably
 408 available to perform his or her duties, I designate as my
 409 alternate health care surrogate:

410
 411 Name: ...(name of alternate health care surrogate)...

412 Address: ...(address)...

413 Phone: ...(telephone)...

414



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INSTRUCTIONS FOR HEALTH CARE

415 | INSTRUCTIONS FOR HEALTH CARE

416 | I authorize my health care surrogate to:

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

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

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

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

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

422 | clearinghouse; and

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

424 | mental health or condition; the provision of health care to me;

425 | or the past, present, or future payment for the provision of

426 | health care to me.

427 | I further authorize my health care surrogate to:

428 | ...(Initial here)... Make all health care decisions for me,

429 | which means he or she has the authority to:

430 | 1. Provide informed consent, refusal of consent, or

431 | withdrawal of consent to any and all of my health care,

432 | including life-prolonging procedures.

433 | 2. Apply on my behalf for private, public, government, or

434 | veterans' benefits to defray the cost of health care.

435 | 3. Access my health information reasonably necessary for

436 | the health care surrogate to make decisions involving my health

437 | care and to apply for benefits for me.

438 | 4. Decide to make an anatomical gift pursuant to part V of

439 | chapter 765, Florida Statutes.

440 | ...(Initial here)... Specific instructions and



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441 restrictions:
 442
 443

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

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

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

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

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

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

466 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE



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467 THIS DESIGNATION; OR
 468 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
 469 FROM THIS DESIGNATION.

470
 471 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
 472 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
 473 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
 474 FOLLOWING BOXES:

475
 476 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 477 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
 478 IMMEDIATELY.

479
 480 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
 481 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
 482 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,
 483 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER
 484 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERCEDE
 485 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE
 486 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

487
 488 SIGNATURES: Sign and date the form here:

489 ...(date)... ...(sign your name)...
 490 ...(address)... ...(print your name)...
 491 ...(city)... ...(state)...

492



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493 SIGNATURES OF WITNESSES:

494	<u>First witness</u>	<u>Second witness</u>
495	<u>...(print name)...</u>	<u>...(print name)...</u>
496	<u>...(address)...</u>	<u>...(address)...</u>
497	<u>...(city)... ..(state)...</u>	<u>...(city)... ..(state)...</u>
498	<u>...(signature of witness)...</u>	<u>...(signature of witness)...</u>
499	<u>...(date)...</u>	<u>...(date)...</u>

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

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

505 Name:.....

506 Address:.....

507

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

508

509 Phone:.....

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

512 Name:.....

513 Address:.....

514

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

515

516 Phone:.....



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

522 Additional instructions (optional):.....
523
524
525

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

531 Name:.....
532 Name:.....
533
534

535 Signed:.....
536 Date:.....

537
538 Witnesses: 1. —
 2. —

539
540 Section 10. Section 765.2035, Florida Statutes, is created



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541 to read:

542 765.2035 Designation of a health care surrogate for a
543 minor.-

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

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

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

564 (4) If neither the designated surrogate or the designated
565 alternate surrogate is willing, able, or reasonably available to
566 make health care decisions for the minor on behalf of the



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567 minor's principal and in accordance with the minor's principal's
568 instructions, s. 743.0645(2) shall apply as if no surrogate had
569 been designated.

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

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

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

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

591 765.2038 Designation of health care surrogate for a minor;
592 suggested form.—A written designation of a health care surrogate



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593 | for a minor executed pursuant to this chapter may, but need to
594 | be, in the following form:

595 | DESIGNATION OF HEALTH CARE SURROGATE

596 | FOR MINOR

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

601 |;

602 |;

603 |;

604 |,
605 | pursuant to s. 765.2035, Florida Statutes, designate the
606 | following person to act as my/our surrogate for health care
607 | decisions for such minor(s) in the event that I/we am/are not
608 | able or reasonably available to provide consent for medical
609 | treatment and surgical and diagnostic procedures:

610 | Name: ... (name) ...

611 | Address: ... (address) ...

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

613 | Phone: ... (telephone) ...

614 | If my/our designated health care surrogate for a minor is
615 | not willing, able, or reasonably available to perform his or her



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619 | duties, I/we designate the following person as my/our alternate
620 | health care surrogate for a minor:

621 |

622 | Name: ...(name)...

623 | Address: ...(address)...

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

625 | Phone: ...(telephone)...

626 |

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

634 |

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

641 |

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



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669
670

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



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671 in question, the primary or attending physician shall evaluate
672 the principal's capacity and, if the evaluating physician
673 concludes that the principal lacks capacity, enter that
674 evaluation in the principal's medical record. If the evaluating
675 ~~attending~~ physician has a question as to whether the principal
676 lacks capacity, another physician shall also evaluate the
677 principal's capacity, and if the second physician agrees that
678 the principal lacks the capacity to make health care decisions
679 or provide informed consent, the health care facility shall
680 enter both physician's evaluations in the principal's medical
681 record. If the principal has designated a health care surrogate
682 or has delegated authority to make health care decisions to an
683 attorney in fact under a durable power of attorney, the health
684 care facility shall notify such surrogate or attorney in fact in
685 writing that her or his authority under the instrument has
686 commenced, as provided in chapter 709 or s. 765.203. If an
687 attending physician determines that the principal lacks
688 capacity, the hospital in which the attending physician made
689 such a determination shall notify the principal's primary
690 physician of the determination.

691 (3) The surrogate's authority commences either shall
692 ~~commence~~ upon a determination under subsection (2) that the
693 principal lacks capacity or upon a stipulation of such authority
694 pursuant to s. 765.101(21). ~~and~~ Such authority remains shall
695 ~~remain~~ in effect until a determination that the principal has
696 regained such capacity, if the authority commenced as a result



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697 of incapacity, or until the authority is revoked, if the
698 authority commenced immediately pursuant to s. 765.101(21). Upon
699 commencement of the surrogate's authority, a surrogate who is
700 not the principal's spouse shall notify the principal's spouse
701 or adult children of the principal's designation of the
702 surrogate. Except if the principal provided immediately
703 exercisable authority to the surrogate pursuant to s.
704 765.101(21), in the event that the primary or attending
705 physician determines that the principal has regained capacity,
706 the authority of the surrogate shall cease, but recommences
707 ~~shall recommence~~ if the principal subsequently loses capacity as
708 determined pursuant to this section. A health care provider is
709 not liable for relying upon health care decisions made by a
710 surrogate while the principal lacks capacity. At any time when a
711 principal lacks capacity, a health care decision made on the
712 principal's behalf by a surrogate is effective to the same
713 extent as a decision made by the principal. If a principal
714 possesses capacity, health care decisions of the principal take
715 precedence over decisions made by the surrogate that present a
716 material conflict.

717 (4) Notwithstanding subsections (2) and (3), if the
718 principal has designated a health care surrogate and has
719 stipulated that the authority of the surrogate is to take effect
720 immediately, or has appointed an agent under a durable power of
721 attorney as provided in chapter 709 to make health care
722 decisions for the principal, the health care facility shall



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723 notify such surrogate or agent in writing when a determination
724 of incapacity has been entered into the principal's medical
725 record.

726 ~~(5)(4)~~ A determination made pursuant to this section that
727 a principal lacks capacity to make health care decisions shall
728 not be construed as a finding that a principal lacks capacity
729 for any other purpose.

730 ~~(6)(5)~~ If ~~In the event~~ the surrogate is required to
731 consent to withholding or withdrawing life-prolonging
732 procedures, ~~the provisions of part III applies shall apply.~~

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

735 765.205 Responsibility of the surrogate.—

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

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

741 (2) The surrogate may authorize the release of health
742 information ~~and medical records~~ to appropriate persons to ensure
743 the continuity of the principal's health care and may authorize
744 the admission, discharge, or transfer of the principal to or
745 from a health care facility or other facility or program
746 licensed under chapter 400 or chapter 429.

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



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749 765.302 Procedure for making a living will; notice to
750 physician.—

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

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

763 765.303 Suggested form of a living will.—

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

766 Living Will

767 Declaration made this day of, ...(year)...., I,
768, willfully and voluntarily make known my desire that my
769 dying not be artificially prolonged under the circumstances set
770 forth below, and I do hereby declare that, if at any time I am
771 incapacitated and

772 ... (initial)... I have a terminal condition
773 or ... (initial)... I have an end-stage condition
774 or ... (initial)... I am in a persistent vegetative state



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

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

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

793 | Name:.....

794 | Address:.....

795 |
 Zip Code:.....

796 |
 797 | Phone:.....

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



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800 Additional Instructions (optional):
 801
 802
 803
 804 (Signed)
 805Witness.....
 806Address.....
 807Phone.....
 808Witness.....
 809Address.....
 810Phone.....

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

813 765.304 Procedure for living will.—

814 (1) If a person has made a living will expressing his or
 815 her desires concerning life-prolonging procedures, but has not
 816 designated a surrogate to execute his or her wishes concerning
 817 life-prolonging procedures or designated a surrogate under part
 818 II, the person's primary ~~attending~~ physician may proceed as
 819 directed by the principal in the living will. In the event of a
 820 dispute or disagreement concerning the primary ~~attending~~
 821 physician's decision to withhold or withdraw life-prolonging
 822 procedures, the primary ~~attending~~ physician shall not withhold
 823 or withdraw life-prolonging procedures pending review under s.
 824 765.105. If a review of a disputed decision is not sought within
 825 7 days following the primary ~~attending~~ physician's decision to



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826 withhold or withdraw life-prolonging procedures, the primary
827 ~~attending~~ physician may proceed in accordance with the
828 principal's instructions.

829 Section 17. Section 765.306, Florida Statutes, is amended
830 to read:

831 765.306 Determination of patient condition.—In determining
832 whether the patient has a terminal condition, has an end-stage
833 condition, or is in a persistent vegetative state or may recover
834 capacity, or whether a medical condition or limitation referred
835 to in an advance directive exists, the patient's primary
836 ~~attending or treating~~ physician and at least one other
837 consulting physician must separately examine the patient. The
838 findings of each such examination must be documented in the
839 patient's medical record and signed by each examining physician
840 before life-prolonging procedures may be withheld or withdrawn.

841 Section 18. Section 765.404, Florida Statutes, is amended
842 to read:

843 765.404 Persistent vegetative state.—For persons in a
844 persistent vegetative state, as determined by the person's
845 primary ~~attending~~ physician in accordance with currently
846 accepted medical standards, who have no advance directive and
847 for whom there is no evidence indicating what the person would
848 have wanted under such conditions, and for whom, after a
849 reasonably diligent inquiry, no family or friends are available
850 or willing to serve as a proxy to make health care decisions for
851 them, life-prolonging procedures may be withheld or withdrawn



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852 under the following conditions:

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

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

873 Section 19. Paragraph (c) of subsection (1) of section
874 765.516, Florida Statutes, is amended to read:

875 765.516 Donor amendment or revocation of anatomical gift.—

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



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

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

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1
 2 An act relating to public records; amending s.
 3 744.3701, F.S.; providing an exemption from public
 4 records requirements for records relating to the
 5 settlement of a claim on behalf of a minor or ward;
 6 authorizing a guardian ad litem, a ward, a minor, and
 7 a minor's attorney to inspect guardianship reports and
 8 court records relating to the settlement of a claim on
 9 behalf of a minor or ward, upon a showing of good
 10 cause; authorizing the court to direct disclosure and
 11 recording of an amendment to a report or court records
 12 relating to the settlement of a claim on behalf of a
 13 minor or ward, in connection with real property or for
 14 other purposes; providing a statement of public
 15 necessity; providing a contingent effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 744.3701, Florida Statutes, is amended
 20 to read:

21 744.3701 Confidentiality ~~Inspection of report.~~-

22 (1) Unless otherwise ordered by the court, upon a showing
 23 of good cause, an ~~any~~ initial, annual, or final guardianship
 24 report or amendment thereto, or a court record relating to the
 25 settlement of a claim, is subject to inspection only by the
 26 court, the clerk or the clerk's representative, the guardian and

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27 | the guardian's attorney, the guardian ad litem with regard to
 28 | the settlement of the claim, ~~and~~ the ward if he or she is at
 29 | least 14 years of age and has not, ~~unless he or she is a minor~~
 30 | ~~or has~~ been determined to be totally incapacitated, ~~and~~ the
 31 | ward's attorney, the minor if he or she is at least 14 years of
 32 | age, or the attorney representing the minor with regard to the
 33 | minor's claim, or as otherwise provided by this chapter.

34 | (2) The court may direct disclosure and recording of parts
 35 | of an initial, annual, or final report or amendment thereto, or
 36 | a court record relating to the settlement of a claim, including
 37 | a petition for approval of a settlement on behalf of a ward or
 38 | minor, a report of a guardian ad litem relating to a pending
 39 | settlement, or an order approving a settlement on behalf of a
 40 | ward or minor, in connection with a ~~any~~ real property
 41 | transaction or for such other purpose as the court allows, ~~in~~
 42 | ~~its discretion.~~

43 | (3) A court record relating to the settlement of a ward's
 44 | or minor's claim, including a petition for approval of a
 45 | settlement on behalf of a ward or minor, a report of a guardian
 46 | ad litem relating to a pending settlement, or an order approving
 47 | a settlement on behalf of a ward or minor, is confidential and
 48 | exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 49 | of the State Constitution and may not be disclosed except as
 50 | specifically authorized.

51 | Section 2. The Legislature finds that it is a public
 52 | necessity that a court record relating to the settlement of a

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53 ward's or minor's claim, including a petition for approval of a
54 settlement on behalf of a ward or minor, a report of a guardian
55 ad litem relating to a pending settlement, or an order approving
56 a settlement on behalf of a ward or minor, be made confidential
57 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
58 Art. I of the State Constitution. The information contained in
59 these records is of a sensitive, personal nature, and its
60 disclosure could jeopardize the physical safety and financial
61 security of the minor or ward. In order to protect minors,
62 wards, and others who could be at risk upon disclosure of a
63 settlement, it is necessary to ensure that only those interested
64 persons who are involved in settlement proceedings or the
65 administration of the guardianship have access to reports and
66 records. The Legislature finds that the court retaining
67 discretion to direct disclosure of these records is a fair
68 alternative to public access.

69 Section 3. This act shall take effect on the same date
70 that HB 5 or similar legislation takes effect, if such
71 legislation is adopted in the same legislative session or an
72 extension thereof and becomes law.

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2015 Legislature

1
2 An act relating to electronic noticing of trust
3 accounts; amending s. 736.0109, F.S.; authorizing a
4 sender to post a document to a secure electronic
5 account or website upon the approval of a recipient;
6 providing for effective authorization for such
7 posting; requiring a sender to provide a separate
8 notice once a document is electronically posted;
9 specifying when a document sent electronically is
10 deemed received by the recipient; requiring a sender
11 to provide notice of the beginning of a limitations
12 period and authority of a recipient to amend or revoke
13 authorization for electronic posting; providing a form
14 that may be used to effectuate such notice; requiring
15 documents posted to an electronic website to remain
16 accessible to the recipient for a specified period;
17 establishing burdens of proof for purposes of
18 determining whether proper notifications were
19 provided; specifying that electronic messages are
20 deemed received when sent; specifying situations under
21 which electronic messages are not deemed received;
22 specifying that service of documents in a judicial
23 proceeding are governed by the Florida Rules of Civil
24 Procedure; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsections (3) and (4) of section 736.0109, Florida Statutes, are renumbered as subsections (5) and (6), respectively, present subsection (4) is amended, and new subsections (3) and (4) are added to that section, to read:

736.0109 Methods and waiver of notice.—

(3) In addition to the methods listed in subsection (1) for sending a document, a sender may post a document to a secure electronic account or website where the document can be accessed.

(a) Before a document may be posted to an electronic account or website, the recipient must sign a separate written authorization solely for the purpose of authorizing the sender to post documents on an electronic account or website. The written authorization must:

1. Enumerate the documents that may be posted in this manner.

2. Contain specific instructions for accessing the electronic account or website, including the security procedures required to access the electronic account or website, such as a username and password.

3. Advise the recipient that a separate notice will be sent when a document is posted to the electronic account or website and the manner in which the separate notice will be sent.

4. Advise the recipient that the authorization to receive

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53 documents by electronic posting may be amended or revoked at any
54 time and include specific instructions for revoking or amending
55 the authorization, including the address designated for the
56 purpose of receiving notice of the revocation or amendment.

57 5. Advise the recipient that posting a document on the
58 electronic account or website may commence a limitations period
59 as short as 6 months even if the recipient never actually
60 accesses the electronic account, electronic website, or the
61 document.

62 (b) Once the recipient signs the written authorization,
63 the sender must provide a separate notice to the recipient when
64 a document is posted to the electronic account or website. As
65 used in this subsection, the term "separate notice" means a
66 notice sent to the recipient by means other than electronic
67 posting, which identifies each document posted to the electronic
68 account or website and provides instructions for accessing the
69 posted document. The separate notice requirement is satisfied if
70 the recipient accesses the document on the electronic account or
71 website.

72 (c) A document sent by electronic posting is deemed
73 received by the recipient on the earlier of the date that the
74 separate notice is received or the date that the recipient
75 accesses the document on the electronic account or website.

76 (d) At least annually after a recipient signs a written
77 authorization, a sender shall send a notice advising recipients
78 who have authorized one or more documents to be posted to an

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79 electronic account or website that such posting may commence a
80 limitations period as short as 6 months even if the recipient
81 never accesses the electronic account or website or the document
82 and that authority to receive documents by electronic posting
83 may be amended or revoked at any time. This notice must be given
84 by means other than electronic posting and may not be
85 accompanied by any other written communication. Failure to
86 provide such notice within 380 days after the last notice is
87 deemed to automatically revoke the authorization to receive
88 documents in the manner permitted under this subsection 380 days
89 after the last notice is sent.

90 (e) The notice required in paragraph (d) may be in
91 substantially the following form: "You have authorized the
92 receipt of documents through posting to an electronic account or
93 website where the documents can be accessed. This notice is
94 being sent to advise you that a limitations period, which may be
95 as short as 6 months, may be running as to matters disclosed in
96 a trust accounting or other written report of a trustee posted
97 to the electronic account or website even if you never actually
98 access the electronic account or website or the documents. You
99 may amend or revoke the authorization to receive documents by
100 electronic posting at any time. If you have any questions,
101 please consult your attorney."

102 (f) A sender may rely on the recipient's authorization
103 until the recipient amends or revokes the authorization by
104 sending a notice to the address designated for that purpose in

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105 the authorization. The recipient, at any time, may amend or
 106 revoke an authorization to have documents posted on the
 107 electronic account or website.

108 (g) A document provided to a recipient solely through
 109 electronic posting must remain accessible to the recipient on
 110 the electronic account or website for at least 4 years after the
 111 date that the document is deemed received by the recipient. The
 112 electronic account or website must allow the recipient to
 113 download or print the document. This subsection does not affect
 114 or alter the duties of a trustee to keep clear, distinct, and
 115 accurate records pursuant to s. 736.0810 or affect or alter the
 116 time periods for which the trustee must maintain those records.

117 (h) To be effective, the posting of a document to an
 118 electronic account or website must be done in accordance with
 119 this subsection. The sender has the burden of establishing
 120 compliance with this subsection.

121 (i) This subsection does not preclude the sending of a
 122 document by other means.

123 (4) Notice to a person under this code, or the sending of
 124 a document to a person under this code by electronic message, is
 125 complete when the document is sent.

126 (a) An electronic message is presumed received on the date
 127 that the message is sent.

128 (b) If the sender has knowledge that an electronic message
 129 did not reach the recipient, the electronic message is deemed to
 130 have not been received. The sender has the burden to prove that

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131 another copy of the notice or document was sent by electronic
 132 message or by other means authorized by this section.

133 (6)-(4) Notice and service of documents in ~~of~~ a judicial
 134 proceeding are governed by ~~must be given as provided in the~~
 135 Florida Rules of Civil Procedure.

136 Section 2. This act shall take effect July 1, 2015.

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1
2 An act relating to estates; amending s. 733.106, F.S.;
3 authorizing the court, if costs and attorney fees are
4 to be paid from the estate under specified sections of
5 law, to direct payment from a certain part of the
6 estate or, under specified circumstances, to direct
7 payment from a trust; authorizing costs and fees to be
8 assessed against one or more persons' part of the
9 trust in such proportions as the court finds just and
10 proper; specifying factors that the court may consider
11 in directing the assessment of such costs and fees;
12 authorizing a court to assess costs and fees without
13 finding that the person engaged in specified wrongful
14 acts; amending s. 733.212, F.S.; revising the required
15 content for a notice of administration; revising
16 provisions that require an interested person, who has
17 been served a notice of administration, to file
18 specified objections in an estate matter within 3
19 months after service of such notice; providing that
20 the 3-month period may only be extended for certain
21 estoppel; providing that objections that are not
22 barred by the 3-month period must be filed no later
23 than a specified date; deleting references to
24 objections based upon the qualifications of a personal
25 representative; amending s. 733.2123, F.S.; conforming
26 provisions to changes made by the act; amending s.
27 733.3101, F.S.; requiring a personal representative to
28 resign immediately if he or she knows that he or she
29 was not qualified to act at the time of appointment;

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30 requiring a personal representative who was qualified
31 to act at such appointment to file a notice if no
32 longer qualified; authorizing an interested person
33 within a specified period to request the removal of a
34 personal representative who files such notice;
35 providing that a personal representative is liable for
36 costs and attorney fees incurred in a removal
37 proceeding if he or she is removed and should have
38 known of the facts supporting the removal; defining
39 the term "qualified"; amending s. 733.504, F.S.;
40 requiring a personal representative to be removed and
41 the letters of administration revoked if he or she was
42 not qualified to act at the time of appointment;
43 amending s. 733.817, F.S.; defining and redefining
44 terms; deleting a provision that exempts an interest
45 in protected homestead from the apportionment of
46 taxes; providing for the payment of taxes on protected
47 homestead family allowance and exempt property by
48 certain other property to the extent such other
49 property is sufficient; revising the allocation of
50 taxes; revising the apportionment of the net tax
51 attributable to specified interests; authorizing a
52 court to assess liability in an equitable manner under
53 certain circumstances; providing that a governing
54 instrument may not direct that taxes be paid from
55 property other than property passing under the
56 governing instrument, except under specified
57 conditions; requiring that direction in a governing
58 instrument be express to apportion taxes under certain

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59 | circumstances; requiring that the right of recovery
60 | provided in the Internal Revenue Code for certain
61 | taxes be expressly waived in the decedent's will or
62 | revocable trust with certain specificity; specifying
63 | the property upon which certain tax is imposed for
64 | allocation and apportionment of certain tax; providing
65 | that a general statement in the decedent's will or
66 | revocable trust waiving all rights of reimbursement or
67 | recovery under the Internal Revenue Code is not an
68 | express waiver of certain rights of recovery;
69 | requiring direction to specifically reference the
70 | generation-skipping transfer tax imposed by the
71 | Internal Revenue Code to direct its apportionment;
72 | authorizing, under certain circumstances, the decedent
73 | to direct by will the amount of net tax attributable
74 | to property over which the decedent held a general
75 | power of appointment under certain circumstances;
76 | providing that an express direction in a revocable
77 | trust is deemed to be a direction contained in the
78 | decedent's will as well as the revocable trust under
79 | certain circumstances; providing that an express
80 | direction in the decedent's will to pay tax from the
81 | decedent's revocable trust by specific reference to
82 | the revocable trust is effective unless a contrary
83 | express direction is contained in the revocable trust;
84 | revising the resolution of conflicting directions in
85 | governing instruments with regard to payment of taxes;
86 | providing that the later express direction in the will
87 | or other governing instrument controls; providing that

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88 the date of an amendment to a will or other governing
89 instrument is the date of the will or trust for
90 conflict resolution only if the codicil or amendment
91 contains an express tax apportionment provision or an
92 express modification of the tax apportionment
93 provision; providing that a will is deemed executed
94 after another governing instrument if the decedent's
95 will and another governing instrument were executed on
96 the same date; providing that an earlier conflicting
97 governing instrument controls as to any tax remaining
98 unpaid after the application of the later conflicting
99 governing instrument; providing that a grant of
100 permission or authority in a governing instrument to
101 request payment of tax from property passing under
102 another governing instrument is not a direction
103 apportioning the tax to the property passing under the
104 other governing instrument; providing a grant of
105 permission or authority in a governing instrument to
106 pay tax attributable to property not passing under the
107 governing instrument is not a direction apportioning
108 the tax to property passing under the governing
109 instrument; providing application; prohibiting the
110 requiring of a personal representative or fiduciary to
111 transfer to a recipient property that may be used for
112 payment of taxes; amending s. 736.1005, F.S.;

113 authorizing the court, if attorney fees are to be paid
114 from the trust under specified sections of law, to
115 direct payment from a certain part of the trust;
116 providing that fees may be assessed against one or

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117 more persons' part of the trust in such proportions as
118 the court finds just and proper; specifying factors
119 that the court may consider in directing the
120 assessment of such fees; providing that a court may
121 assess fees without finding that a person engaged
122 specified wrongful acts; amending s. 736.1006, F.S.;
123 authorizing the court, if costs are to be paid from
124 the trust under specified sections of law, to direct
125 payment from a certain part of the trust; providing
126 that costs may be assessed against one or more
127 persons' part of the trust in such proportions as the
128 court finds just and proper; specifying factors that
129 the court may consider in directing the assessment of
130 such costs; providing that specified provisions of the
131 act are remedial and intended to clarify existing law;
132 providing for retroactive and prospective application
133 of specified portions of the act; providing an
134 effective date.

135
136 Be It Enacted by the Legislature of the State of Florida:

137
138 Section 1. Section 733.106, Florida Statutes, is amended to
139 read:

140 733.106 Costs and attorney ~~attorney's~~ fees.—

141 (1) In all probate proceedings, costs may be awarded as in
142 chancery actions.

143 (2) A person nominated as personal representative, or any
144 proponent of a will if the person so nominated does not act
145 within a reasonable time, if in good faith justified in offering

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146 the will in due form for probate, shall receive costs and
147 attorney ~~attorney's~~ fees from the estate even though probate is
148 denied or revoked.

149 (3) Any attorney who has rendered services to an estate may
150 be awarded reasonable compensation from the estate.

151 (4) If ~~When~~ costs and attorney ~~attorney's~~ fees are to be
152 paid from the estate under this section, s. 733.6171(4), s.
153 736.1005, or s. 736.1006, the court, in its discretion, may
154 direct from what part of the estate they shall be paid.

155 (a) If the court directs an assessment against a person's
156 part of the estate and such part is insufficient to fully pay
157 the assessment, the court may direct payment from the person's
158 part of a trust, if any, if a pourover will is involved and the
159 matter is interrelated with the trust.

160 (b) All or any part of the costs and attorney fees to be
161 paid from the estate may be assessed against one or more
162 persons' part of the estate in such proportions as the court
163 finds to be just and proper.

164 (c) In the exercise of its discretion, the court may
165 consider the following factors:

166 1. The relative impact of an assessment on the estimated
167 value of each person's part of the estate.

168 2. The amount of costs and attorney fees to be assessed
169 against a person's part of the estate.

170 3. The extent to which a person whose part of the estate is
171 to be assessed, individually or through counsel, actively
172 participated in the proceeding.

173 4. The potential benefit or detriment to a person's part of
174 the estate expected from the outcome of the proceeding.

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175 5. The relative strength or weakness of the merits of the
176 claims, defenses, or objections, if any, asserted by a person
177 whose part of the estate is to be assessed.

178 6. Whether a person whose part of the estate is to be
179 assessed was a prevailing party with respect to one or more
180 claims, defenses, or objections.

181 7. Whether a person whose part of the estate is to be
182 assessed unjustly caused an increase in the amount of costs and
183 attorney fees incurred by the personal representative or another
184 interested person in connection with the proceeding.

185 8. Any other relevant fact, circumstance, or equity.

186 (d) The court may assess a person's part of the estate
187 without finding that the person engaged in bad faith,
188 wrongdoing, or frivolousness.

189 Section 2. Paragraph (c) of subsection (2) and subsection
190 (3) of section 733.212, Florida Statutes, are amended to read:

191 733.212 Notice of administration; filing of objections.—

192 (2) The notice shall state:

193 (c) That any interested person on whom a copy of the notice
194 of administration is served must file on or before the date that
195 is 3 months after the date of service of a copy of the notice of
196 administration on that person any objection that challenges the
197 validity of the will, ~~the qualifications of the personal~~
198 ~~representative,~~ the venue, or the jurisdiction of the court. The
199 3-month time period may only be extended for estoppel based upon
200 a misstatement by the personal representative regarding the time
201 period within which an objection must be filed. The time period
202 may not be extended for any other reason, including affirmative
203 representation, failure to disclose information, or misconduct

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204 by the personal representative or any other person. Unless
205 sooner barred by subsection (3), all objections to the validity
206 of a will, venue, or the jurisdiction of the court must be filed
207 no later than the earlier of the entry of an order of final
208 discharge of the personal representative or 1 year after service
209 of the notice of administration.

210 (3) Any interested person on whom a copy of the notice of
211 administration is served must object to the validity of the
212 will, ~~the qualifications of the personal representative,~~ the
213 venue, or the jurisdiction of the court by filing a petition or
214 other pleading requesting relief in accordance with the Florida
215 Probate Rules on or before the date that is 3 months after the
216 date of service of a copy of the notice of administration on the
217 objecting person, or those objections are forever barred. The 3-
218 month time period may only be extended for estoppel based upon a
219 misstatement by the personal representative regarding the time
220 period within which an objection must be filed. The time period
221 may not be extended for any other reason, including affirmative
222 representation, failure to disclose information, or misconduct
223 by the personal representative or any other person. Unless
224 sooner barred by this subsection, all objections to the validity
225 of a will, venue, or the jurisdiction of the court must be filed
226 no later than the earlier of the entry of an order of final
227 discharge of the personal representative or 1 year after service
228 of the notice of administration.

229 Section 3. Section 733.2123, Florida Statutes, is amended
230 to read:

231 733.2123 Adjudication before issuance of letters.—A
232 petitioner may serve formal notice of the petition for

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233 administration on interested persons. A person who is served
234 with such notice before the issuance of letters or who has
235 waived notice may not challenge the validity of the will,
236 testacy of the decedent, ~~qualifications of the personal~~
237 ~~representative,~~ venue, or jurisdiction of the court, except in
238 the proceedings before issuance of letters.

239 Section 4. Section 733.3101, Florida Statutes, is amended
240 to read:

241 733.3101 Personal representative not qualified.—

242 (1) A personal representative shall resign immediately if
243 the personal representative knows that he or she was not
244 qualified to act at the time of appointment.

245 (2) Any time a personal representative, who was qualified
246 to act at the time of appointment, knows or should have known
247 that he or she would not be qualified for appointment if
248 application for appointment were then made, the personal
249 representative shall promptly file and serve a notice setting
250 forth the reasons. The personal representative's notice shall
251 state that any interested person may petition to remove the
252 personal representative. An interested person on whom a copy of
253 the personal representative's notice is served may file a
254 petition requesting the personal representative's removal within
255 30 days after the date on which such notice is served.

256 (3) A personal representative who fails to comply with this
257 section shall be personally liable for costs, including attorney
258 attorney's fees, incurred in any removal proceeding, if the
259 personal representative is removed. This liability extends to a
260 personal representative who does not know, but should have
261 known, of the facts that would have required him or her to

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262 resign under subsection (1) or to file and serve notice under
263 subsection (2). This liability shall be cumulative to any other
264 provided by law.

265 (4) As used in this section, the term "qualified" means
266 that the personal representative is qualified under ss. 733.302
267 -733.305.

268 Section 5. Section 733.504, Florida Statutes, is amended to
269 read:

270 733.504 Removal of personal representative; causes for
271 removal.-A personal representative shall be removed and the
272 letters revoked if he or she was not qualified to act at the
273 time of appointment. A personal representative may be removed
274 and the letters revoked for any of the following causes, ~~and the~~
275 ~~removal shall be in addition to any penalties prescribed by law:~~

276 (1) Adjudication that the personal representative is
277 incapacitated.

278 (2) Physical or mental incapacity rendering the personal
279 representative incapable of the discharge of his or her duties.

280 (3) Failure to comply with any order of the court, unless
281 the order has been superseded on appeal.

282 (4) Failure to account for the sale of property or to
283 produce and exhibit the assets of the estate when so required.

284 (5) Wasting or maladministration of the estate.

285 (6) Failure to give bond or security for any purpose.

286 (7) Conviction of a felony.

287 (8) Insolvency of, or the appointment of a receiver or
288 liquidator for, any corporate personal representative.

289 (9) Holding or acquiring conflicting or adverse interests
290 against the estate that will or may interfere with the

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291 administration of the estate as a whole. This cause of removal
292 shall not apply to the surviving spouse because of the exercise
293 of the right to the elective share, family allowance, or
294 exemptions, as provided elsewhere in this code.

295 (10) Revocation of the probate of the decedent's will that
296 authorized or designated the appointment of the personal
297 representative.

298 (11) Removal of domicile from Florida, if domicile was a
299 requirement of initial appointment.

300 (12) The personal representative was qualified to act at
301 the time of appointment, but is ~~would~~ not now ~~be~~ entitled to
302 appointment.

303
304 Removal under this section is in addition to any penalties
305 prescribed by law.

306 Section 6. Section 733.817, Florida Statutes, is amended to
307 read:

308 (Substantial rewording of section. See
309 s. 733.817, F.S., for present text.)

310 733.817 Apportionment of estate taxes.—

311 (1) DEFINITIONS.—As used in this section, the term:

312 (a) "Fiduciary" means a person, other than the personal
313 representative in possession of property included in the measure
314 of the tax, who is liable to the applicable taxing authority for
315 payment of the entire tax to the extent of the value of the
316 property in possession.

317 (b) "Generation-skipping transfer tax" means the
318 generation-skipping transfer tax imposed by chapter 13 of the
319 Internal Revenue Code on direct skips of interests includible in

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320 the federal gross estate or a corresponding tax imposed by any
321 state or country or political subdivision of the foregoing. The
322 term does not include the generation-skipping transfer tax on
323 taxable distributions, taxable terminations, or any other
324 generation-skipping transfer. The terms "direct skip," "taxable
325 distribution," and "taxable termination" have the same meanings
326 as provided in s. 2612 of the Internal Revenue Code.

327 (c) "Governing instrument" means a will, trust instrument,
328 or any other document that controls the transfer of property on
329 the occurrence of the event with respect to which the tax is
330 being levied.

331 (d) "Gross estate" means the gross estate, as determined by
332 the Internal Revenue Code with respect to the federal estate tax
333 and the Florida estate tax, and as that concept is otherwise
334 determined by the estate, inheritance, or death tax laws of the
335 particular state, country, or political subdivision whose tax is
336 being apportioned.

337 (e) "Included in the measure of the tax" means for each
338 separate tax that an interest may incur, only interests included
339 in the measure of that particular tax are considered. As used in
340 this section, the term does not include:

341 1. Any interest, whether passing under the will or not, to
342 the extent the interest is initially deductible from the gross
343 estate, without regard to any subsequent reduction of the
344 deduction by reason of the charge of any part of the applicable
345 tax to the interest. If an election is required for
346 deductibility, an interest is not initially deductible unless
347 the election for deductibility is allowed.

348 2. Interests or amounts that are not included in the gross

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349 estate but are included in the amount upon which the applicable
350 tax is computed, such as adjusted taxable gifts pursuant to s.
351 2001 of the Internal Revenue Code.

352 3. Gift taxes included in the gross estate pursuant to s.
353 2035 of the Internal Revenue Code and the portion of any inter
354 vivos transfer included in the gross estate pursuant to s. 529
355 of the Internal Revenue Code, notwithstanding inclusion in the
356 gross estate.

357 (f) "Internal Revenue Code" means the Internal Revenue Code
358 of 1986, as amended.

359 (g) "Net tax" means the net tax payable to the particular
360 state, country, or political subdivision whose tax is being
361 apportioned, after taking into account all credits against the
362 applicable tax except as provided in this section. With respect
363 to the federal estate tax, net tax is determined after taking
364 into account all credits against the tax except for the credit
365 for foreign death taxes and except for the credit or deduction
366 for state taxes imposed by states other than this state.

367 (h) "Nonresiduary devise" means any devise that is not a
368 residuary devise.

369 (i) "Nonresiduary interest," in connection with a trust,
370 means any interest in a trust which is not a residuary interest.

371 (j) "Recipient" means, with respect to property or an
372 interest in property included in the gross estate, an heir at
373 law in an intestate estate, devisee in a testate estate,
374 beneficiary of a trust, beneficiary of a life insurance policy,
375 annuity, or other contractual right, surviving tenant, taker as
376 a result of the exercise or in default of the exercise of a
377 general power of appointment, person who receives or is to

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378 receive the property or an interest in the property, or person
379 in possession of the property, other than a creditor.

380 (k) "Residuary devise" has the meaning in s. 731.201.

381 (l) "Residuary interest," in connection with a trust, means
382 an interest in the assets of a trust which remain after
383 provision for any distribution that is to be satisfied by
384 reference to a specific property or type of property, fund, sum,
385 or statutory amount.

386 (m) "Revocable trust" means a trust as described in s.
387 733.707(3).

388 (n) "Section 2044 interest" means an interest included in
389 the measure of the tax by reason of s. 2044 of the Internal
390 Revenue Code.

391 (o) "State" means any state, territory, or possession of
392 the United States, the District of Columbia, or the Commonwealth
393 of Puerto Rico.

394 (p) "Tax" means any estate tax, inheritance tax,
395 generation-skipping transfer tax, or other tax levied or
396 assessed under the laws of this or any other state, the United
397 States, any other country, or any political subdivision of the
398 foregoing, as finally determined, which is imposed as a result
399 of the death of the decedent. The term also includes any
400 interest or penalties imposed in addition to the tax. Unless the
401 context indicates otherwise, the term means each separate tax.
402 The term does not include any additional estate tax imposed by
403 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a
404 corresponding tax imposed by any state or country or political
405 subdivision of the foregoing. The additional estate tax imposed
406 shall be apportioned as provided in s. 2032A or s. 2057 of the

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407 Internal Revenue Code.

408 (q) "Temporary interest" means an interest in income or an
409 estate for a specific period of time, for life, or for some
410 other period controlled by reference to extrinsic events,
411 whether or not in trust.

412 (r) "Tentative Florida tax" with respect to any property
413 means the net Florida estate tax that would have been
414 attributable to that property if no tax were payable to any
415 other state in respect of that property.

416 (s) "Value" means the pecuniary worth of the interest
417 involved as finally determined for purposes of the applicable
418 tax after deducting any debt, expense, or other deduction
419 chargeable to it for which a deduction was allowed in
420 determining the amount of the applicable tax. A lien or other
421 encumbrance is not regarded as chargeable to a particular
422 interest to the extent that it will be paid from other
423 interests. The value of an interest is not reduced by reason of
424 the charge against it of any part of the tax, except as provided
425 in paragraph (3) (a).

426 (2) ALLOCATION OF TAX.—Except as effectively directed in
427 the governing instrument pursuant to subsection (4), the net tax
428 attributable to the interests included in the measure of each
429 tax shall be determined by the proportion that the value of each
430 interest included in the measure of the tax bears to the total
431 value of all interests included in the measure of the tax.
432 Notwithstanding the foregoing provision of this subsection and
433 except as effectively directed in the governing instrument:

434 (a) The net tax attributable to section 2044 interests
435 shall be determined in the manner provided for the federal

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436 estate tax in s. 2207A of the Internal Revenue Code, and the
437 amount so determined shall be deducted from the tax to determine
438 the net tax attributable to all other interests included in the
439 measure of the tax.

440 (b) The foreign tax credit allowed with respect to the
441 federal estate tax shall be allocated among the recipients of
442 interests finally charged with the payment of the foreign tax in
443 reduction of any federal estate tax chargeable to the recipients
444 of the foreign interests, whether or not any federal estate tax
445 is attributable to the foreign interests. Any excess of the
446 foreign tax credit shall be applied to reduce proportionately
447 the net amount of federal estate tax chargeable to the remaining
448 recipients of the interests included in the measure of the
449 federal estate tax.

450 (c) The reduction in the net tax attributable to the
451 deduction for state death taxes allowed by s. 2058 of the
452 Internal Revenue Code shall be allocated to the recipients of
453 the interests that produced the deduction. For this purpose, the
454 reduction in the net tax shall be calculated in the manner
455 provided for interests other than those described in paragraph
456 (a).

457 (d) The reduction in the Florida tax, if one is imposed, on
458 the estate of a Florida resident for tax paid to another state
459 shall be allocated as follows:

460 1. If the net tax paid to another state is greater than or
461 equal to the tentative Florida tax attributable to the property
462 subject to tax in the other state, none of the Florida tax shall
463 be attributable to that property.

464 2. If the net tax paid to another state is less than the

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465 tentative Florida tax attributable to the property subject to
466 tax in the other state, the net Florida tax attributable to the
467 property subject to tax in the other state shall be the excess
468 of the amount of the tentative Florida tax attributable to the
469 property over the net tax payable to the other state with
470 respect to the property.

471 3. Any remaining net Florida tax shall be attributable to
472 property included in the measure of the Florida tax exclusive of
473 the property subject to tax in another state.

474 4. The net federal tax attributable to the property subject
475 to tax in the other state shall be determined as if the property
476 were located in that state.

477 (e) The net tax attributable to a temporary interest, if
478 any, is regarded as attributable to the principal that supports
479 the temporary interest.

480 (3) APPORTIONMENT OF TAX.—Except as otherwise effectively
481 directed in the governing instrument pursuant to subsection (4),
482 the net tax attributable to each interest shall be apportioned
483 as follows:

484 (a) Generation-skipping transfer tax.—Any federal or state
485 generation-skipping transfer tax shall be apportioned as
486 provided in s. 2603 of the Internal Revenue Code after the
487 application of the remaining provisions of this subsection to
488 taxes other than the generation-skipping transfer tax.

489 (b) Section 2044 interests.—The net tax attributable to
490 section 2044 interests shall be apportioned among the recipients
491 of the section 2044 interests in the proportion that the value
492 of each section 2044 interest bears to the total of all section
493 2044 interests. The net tax apportioned by this paragraph to

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494 section 2044 interests that pass in the manner described in
495 paragraph (c) or paragraph (d) shall be apportioned to the
496 section 2044 interests in the manner described in those
497 paragraphs before the apportionment of the net tax attributable
498 to the other interests passing as provided in those paragraphs.
499 The net tax attributable to the interests other than the section
500 2044 interests which pass in the manner described in paragraph
501 (c) or paragraph (d) shall be apportioned only to such other
502 interests pursuant to those paragraphs.

503 (c) Wills.—The net tax attributable to property passing
504 under the decedent's will shall be apportioned in the following
505 order of priority:

506 1. The net tax attributable to nonresiduary devises shall
507 be charged to and paid from the residuary estate, whether or not
508 all interests in the residuary estate are included in the
509 measure of the tax. If the residuary estate is insufficient to
510 pay the net tax attributable to all nonresiduary devises, the
511 balance of the net tax attributable to nonresiduary devises
512 shall be apportioned among the recipients of the nonresiduary
513 devises in the proportion that the value of each nonresiduary
514 devise included in the measure of the tax bears to the total of
515 all nonresiduary devises included in the measure of the tax.

516 2. The net tax attributable to residuary devises shall be
517 apportioned among the recipients of the residuary devises
518 included in the measure of the tax in the proportion that the
519 value of each residuary devise included in the measure of the
520 tax bears to the total of all residuary devises included in the
521 measure of the tax. If the residuary estate is insufficient to
522 pay the net tax attributable to all residuary devises, the

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523 balance of the net tax attributable to residuary devisees shall
524 be apportioned among the recipients of the nonresiduary devisees
525 in the proportion that the value of each nonresiduary devise
526 included in the measure of the tax bears to the total of all
527 nonresiduary devisees included in the measure of the tax.

528 (d) Trusts.—The net tax attributable to property passing
529 under the terms of any trust other than a trust created in the
530 decedent's will shall be apportioned in the following order of
531 priority:

532 1. The net tax attributable to nonresiduary interests of
533 the trust shall be charged to and paid from the residuary
534 portion of the trust, whether or not all interests in the
535 residuary portion are included in the measure of the tax. If the
536 residuary portion is insufficient to pay the net tax
537 attributable to all nonresiduary interests, the balance of the
538 net tax attributable to nonresiduary interests shall be
539 apportioned among the recipients of the nonresiduary interests
540 in the proportion that the value of each nonresiduary interest
541 included in the measure of the tax bears to the total of all
542 nonresiduary interests included in the measure of the tax.

543 2. The net tax attributable to residuary interests of the
544 trust shall be apportioned among the recipients of the residuary
545 interests of the trust included in the measure of the tax in the
546 proportion that the value of each residuary interest included in
547 the measure of the tax bears to the total of all residuary
548 interests of the trust included in the measure of the tax. If
549 the residuary portion is insufficient to pay the net tax
550 attributable to all residuary interests, the balance of the net
551 tax attributable to residuary interests shall be apportioned

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552 among the recipients of the nonresiduary interests in the
553 proportion that the value of each nonresiduary interest included
554 in the measure of the tax bears to the total of all nonresiduary
555 interests included in the measure of the tax.

556
557 Except as provided in paragraph (g), this paragraph applies
558 separately for each trust.

559 (e) Protected homestead, exempt property, and family
560 allowance.—

561 1. The net tax attributable to an interest in protected
562 homestead, exempt property, and the family allowance determined
563 under s. 732.403 shall be apportioned against the recipients of
564 other interests in the estate or passing under any revocable
565 trust in the following order of priority:

566 a. Class I.—Recipients of interests passing by intestacy
567 that are included in the measure of the federal estate tax.

568 b. Class II.—Recipients of residuary devises, residuary
569 interests, and pretermitted shares under ss. 732.301 and 732.302
570 that are included in the measure of the federal estate tax.

571 c. Class III.—Recipients of nonresiduary devises and
572 nonresiduary interests that are included in the measure of the
573 federal estate tax.

574 2. Any net tax apportioned to a class pursuant to this
575 paragraph shall be apportioned among each recipient in the class
576 in the proportion that the value of the interest of each bears
577 to the total value of all interests included in that class. A
578 tax may not be apportioned under this paragraph to the portion
579 of any interest applied in satisfaction of the elective share
580 whether or not included in the measure of the tax. For purposes

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581 of this paragraph, if the value of the interests described in s.
582 732.2075(1) exceeds the amount of the elective share, the
583 elective share shall be treated as satisfied first from
584 interests other than those described in classes I, II, and III,
585 and to the extent that those interests are insufficient to
586 satisfy the elective share, from the interests passing to or for
587 the benefit of the surviving spouse described in classes I, II,
588 and III, beginning with those described in class I, until the
589 elective share is satisfied. This paragraph has priority over
590 paragraphs (a) and (h).

591 3. The balance of the net tax attributable to any interest
592 in protected homestead, exempt property, and the family
593 allowance determined under s. 732.403 which is not apportioned
594 under the preceding provisions of this paragraph shall be
595 apportioned to the recipients of those interests included in the
596 measure of the tax in the proportion that the value of each
597 bears to the total value of those interests included in the
598 measure of the tax.

599 (f) Construction.—For purposes of this subsection:

600 1. If the decedent's estate is the beneficiary of a life
601 insurance policy, annuity, or contractual right included in the
602 decedent's gross estate, or is the taker as a result of the
603 exercise or default in exercise of a general power of
604 appointment held by the decedent, that interest shall be
605 regarded as passing under the terms of the decedent's will for
606 the purposes of paragraph (c) or by intestacy if not disposed of
607 by will. Additionally, any interest included in the measure of
608 the tax by reason of s. 2041 of the Internal Revenue Code
609 passing to the decedent's creditors or the creditors of the

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610 decedent's estate shall be regarded as passing to the decedent's
611 estate for the purpose of this subparagraph.

612 2. If a trust is the beneficiary of a life insurance
613 policy, annuity, or contractual right included in the decedent's
614 gross estate, or is the taker as a result of the exercise or
615 default in exercise of a general power of appointment held by
616 the decedent, that interest shall be regarded as passing under
617 the trust for purposes of paragraph (d).

618 (g) Common instrument construction.—In the application of
619 this subsection, paragraphs (b)-(f) shall be applied to
620 apportion the net tax to the recipients under certain governing
621 instruments as if all recipients under those instruments, other
622 than the estate or revocable trust itself, were taking under a
623 common instrument. This construction applies to the following:

624 1. The decedent's will and revocable trust if the estate is
625 a beneficiary of the revocable trust or if the revocable trust
626 is a beneficiary of the estate.

627 2. A revocable trust of the decedent and another revocable
628 trust of the decedent if either trust is the beneficiary of the
629 other trust.

630 (h) Other interests.—The net tax that is not apportioned to
631 interests under paragraphs (b)-(g), including, but not limited
632 to, the net tax attributable to interests passing by intestacy,
633 interests applied in satisfaction of the elective share pursuant
634 to s. 732.2075(2), interests passing by reason of the exercise
635 or nonexercise of a general power of appointment, jointly held
636 interests passing by survivorship, life insurance, properties in
637 which the decedent held a reversionary or revocable interest,
638 annuities, and contractual rights, shall be apportioned among

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639 the recipients of the remaining interests included in the
640 measure of the tax in the proportion that the value of each such
641 interest bears to the total value of all remaining interests
642 included in the measure of the tax.

643 (i) Assessment of liability by court.—If the court finds
644 that:

645 1. It is inequitable to apportion interest or penalties, or
646 both, in the manner provided in paragraphs (a)-(h), the court
647 may assess liability for the payment thereof in the manner that
648 the court finds equitable.

649 2. The payment of any tax was not effectively directed in
650 the governing instrument pursuant to subsection (4) and that
651 such tax is not apportioned by this subsection, the court may
652 assess liability for the payment of such tax in the manner that
653 the court finds equitable.

654 (4) DIRECTION AGAINST APPORTIONMENT.—

655 (a) Except as provided in this subsection, a governing
656 instrument may not direct that taxes be paid from property other
657 than that passing under the governing instrument.

658 (b) For a direction in a governing instrument to be
659 effective to direct payment of taxes attributable to property
660 passing under the governing instrument in a manner different
661 from that provided in this section, the direction must be
662 express.

663 (c) For a direction in a governing instrument to be
664 effective to direct payment of taxes attributable to property
665 not passing under the governing instrument from property passing
666 under the governing instrument, the governing instrument must
667 expressly direct that the property passing under the governing

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668 instrument bear the burden of taxation for property not passing
669 under the governing instrument. Except as provided in paragraph
670 (d), a direction in the governing instrument to the effect that
671 all taxes are to be paid from property passing under the
672 governing instrument whether attributable to property passing
673 under the governing instrument or otherwise shall be effective
674 to direct payment from property passing under the governing
675 instrument of taxes attributable to property not passing under
676 the governing instrument.

677 (d) In addition to satisfying the other provisions of this
678 subsection:

679 1.a. For a direction in the decedent's will or revocable
680 trust to be effective in waiving the right of recovery provided
681 in s. 2207A of the Internal Revenue Code for the tax
682 attributable to section 2044 interests, and for any tax imposed
683 by Florida based upon such section 2044 interests, the direction
684 must expressly waive that right of recovery. An express
685 direction that property passing under the will or revocable
686 trust bear the tax imposed by s. 2044 of the Internal Revenue
687 Code is deemed an express waiver of the right of recovery
688 provided in s. 2207A of the Internal Revenue Code. A reference
689 to "qualified terminable interest property," "QTIP," or property
690 in which the decedent had a "qualifying income interest for
691 life" is deemed to be a reference to property upon which tax is
692 imposed by s. 2044 of the Internal Revenue Code which is subject
693 to the right of recovery provided in s. 2207A of the Internal
694 Revenue Code.

695 b. If property is included in the gross estate pursuant to
696 ss. 2041 and 2044 of the Internal Revenue Code, the property is

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697 deemed included under s. 2044, and not s. 2041, for purposes of
698 allocation and apportionment of the tax.

699 2. For a direction in the decedent's will or revocable
700 trust to be effective in waiving the right of recovery provided
701 in s. 2207B of the Internal Revenue Code for tax imposed by
702 reason of s. 2036 of the Internal Revenue Code, and any tax
703 imposed by Florida based upon s. 2036 of the Internal Revenue
704 Code, the direction must expressly waive that right of recovery.
705 An express direction that property passing under the will or
706 revocable trust bear the tax imposed by s. 2036 of the Internal
707 Revenue Code is deemed an express waiver of the right of
708 recovery provided in s. 2207B of the Internal Revenue Code. If
709 property is included in the gross estate pursuant to ss. 2036
710 and 2038 of the Internal Revenue Code, the property is deemed
711 included under s. 2038, not s. 2036, for purposes of allocation
712 and apportionment of the tax, and there is no right of recovery
713 under s. 2207B of the Internal Revenue Code.

714 3. A general statement in the decedent's will or revocable
715 trust waiving all rights of reimbursement or recovery under the
716 Internal Revenue Code is not an express waiver of the rights of
717 recovery provided in s. 2207A or s. 2207B of the Internal
718 Revenue Code.

719 4. For a direction in a governing instrument to be
720 effective to direct payment of generation-skipping transfer tax
721 in a manner other than as provided in s. 2603 of the Internal
722 Revenue Code, and any tax imposed by Florida based on s. 2601 of
723 the Internal Revenue Code, the direction must specifically
724 reference the tax imposed by s. 2601 of the Internal Revenue
725 Code. A reference to the generation-skipping transfer tax or s.

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726 2603 of the Internal Revenue Code is deemed to be a reference to
727 property upon which tax is imposed by reason of s. 2601 of the
728 Internal Revenue Code.

729 (e) If the decedent expressly directs by will, the net tax
730 attributable to property over which the decedent held a general
731 power of appointment may be determined in a manner other than as
732 provided in subsection (2) if the net tax attributable to that
733 property does not exceed the difference between the total net
734 tax determined pursuant to subsection (2), determined without
735 regard to this paragraph, and the total net tax that would have
736 been payable if the value of the property subject to such power
737 of appointment had not been included in the decedent's gross
738 estate. If tax is attributable to one or more section 2044
739 interests pursuant to subsection (2), the net tax attributable
740 to the section 2044 interests shall be calculated before the
741 application of this paragraph unless the decedent expressly
742 directs otherwise by will.

743 (f) If the decedent's will expressly provides that the tax
744 is to be apportioned as provided in the decedent's revocable
745 trust by specific reference to the revocable trust, an express
746 direction in the revocable trust is deemed to be a direction
747 contained in the will as well as the revocable trust.

748 (g) An express direction in the decedent's will to pay tax
749 from the decedent's revocable trust by specific reference to the
750 revocable trust is effective unless a contrary express direction
751 is contained in the revocable trust.

752 (h) If governing instruments contain effective directions
753 that conflict as to payment of taxes, the most recently executed
754 tax apportionment provision controls to the extent of the

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755 conflict. For the purpose of this subsection, if a will or other
756 governing instrument is amended, the date of the codicil to the
757 will or amendment to the governing instrument is regarded as the
758 date of the will or other governing instrument only if the
759 codicil or amendment contains an express tax apportionment
760 provision or an express modification of the tax apportionment
761 provision. A general statement ratifying or republishing all
762 provisions not otherwise amended does not meet this condition.
763 If the decedent's will and another governing instrument were
764 executed on the same date, the will is deemed executed after the
765 other governing instrument. The earlier conflicting governing
766 instrument controls as to any tax remaining unpaid after the
767 application of the later conflicting governing instrument.

768 (i) A grant of permission or authority in a governing
769 instrument to request payment of tax from property passing under
770 another governing instrument is not a direction apportioning the
771 tax to the property passing under the other governing
772 instrument. A grant of permission or authority in a governing
773 instrument to pay tax attributable to property not passing under
774 the governing instrument is not a direction apportioning the tax
775 to property passing under the governing instrument.

776 (j) This section applies to any tax remaining to be paid
777 after the application of any effective express directions. An
778 effective express direction for payment of tax on specific
779 property or a type of property in a manner different from that
780 provided in this section is not effective as an express
781 direction for payment of tax on other property or other types of
782 property included in the measure of the tax.

783 (5) TRANSFER OF PROPERTY.—A personal representative or

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784 fiduciary shall not be required to transfer to a recipient any
785 property reasonably anticipated to be necessary for the payment
786 of taxes. Further, the personal representative or fiduciary is
787 not required to transfer any property to the recipient until the
788 amount of the tax due from the recipient is paid by the
789 recipient. If property is transferred before final apportionment
790 of the tax, the recipient shall provide a bond or other security
791 for his or her apportioned liability in the amount and form
792 prescribed by the personal representative or fiduciary.

793 (6) ORDER OF APPORTIONMENT.—

794 (a) The personal representative may petition at any time
795 for an order of apportionment. If administration of the
796 decedent's estate has not commenced at any time after 90 days
797 from the decedent's death, any fiduciary may petition for an
798 order of apportionment in the court in which venue would be
799 proper for administration of the decedent's estate. Notice of
800 the petition for order of apportionment must be served on all
801 interested persons in the manner provided for service of formal
802 notice. At any time after 6 months from the decedent's death,
803 any recipient may petition the court for an order of
804 apportionment.

805 (b) The court shall determine all issues concerning
806 apportionment. If the tax to be apportioned has not been finally
807 determined, the court shall determine the probable tax due or to
808 become due from all interested persons, apportion the probable
809 tax, and retain jurisdiction over the parties and issues to
810 modify the order of apportionment as appropriate until after the
811 tax is finally determined.

812 (7) DEFICIENCY.—

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813 (a) If the personal representative or fiduciary does not
814 have possession of sufficient property otherwise distributable
815 to the recipient to pay the tax apportioned to the recipient,
816 whether under this section, the Internal Revenue Code, or the
817 governing instrument, if applicable, the personal representative
818 or fiduciary shall recover the deficiency in tax so apportioned
819 to the recipient:

820 1. From the fiduciary in possession of the property to
821 which the tax is apportioned, if any; and

822 2. To the extent of any deficiency in collection from the
823 fiduciary, or to the extent collection from the fiduciary is
824 excused pursuant to subsection (8) and in all other cases, from
825 the recipient of the property to which the tax is apportioned,
826 unless relieved of this duty as provided in subsection (8).

827 (b) In any action to recover the tax apportioned, the order
828 of apportionment is prima facie correct.

829 (c) In any action for the enforcement of an order of
830 apportionment, the court shall award taxable costs as in
831 chancery actions, including reasonable attorney fees, and may
832 award penalties and interest on the unpaid tax in accordance
833 with equitable principles.

834 (d) This subsection does not authorize the recovery of any
835 tax from a company issuing life insurance included in the gross
836 estate, or from a bank, trust company, savings and loan
837 association, or similar institution with respect to any account
838 in the name of the decedent and any other person which passed by
839 operation of law at the decedent's death.

840 (8) RELIEF FROM DUTY.—

841 (a) A personal representative or fiduciary who has the duty

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842 under this section of collecting the apportioned tax from
843 recipients may be relieved of the duty to collect the tax by an
844 order of the court finding that:

845 1. The estimated court costs and attorney fees in
846 collecting the apportioned tax from a person against whom the
847 tax has been apportioned will approximate or exceed the amount
848 of the recovery;

849 2. The person against whom the tax has been apportioned is
850 a resident of a foreign country other than Canada and refuses to
851 pay the apportioned tax on demand; or

852 3. It is impracticable to enforce contribution of the
853 apportioned tax against a person against whom the tax has been
854 apportioned in view of the improbability of obtaining a judgment
855 or the improbability of collection under any judgment that might
856 be obtained, or otherwise.

857 (b) A personal representative or fiduciary is not liable
858 for failure to attempt to enforce collection if the personal
859 representative or fiduciary reasonably believes that collection
860 would have been economically impracticable.

861 (9) UNCOLLECTED TAX.—Any apportioned tax that is not
862 collected shall be reapportioned in accordance with this section
863 as if the portion of the property to which the uncollected tax
864 had been apportioned had been exempt.

865 (10) CONTRIBUTION.—This section does not limit the right of
866 any person who has paid more than the amount of the tax
867 apportionable to that person, calculated as if all apportioned
868 amounts would be collected, to obtain contribution from those
869 who have not paid the full amount of the tax apportionable to
870 them, calculated as if all apportioned amounts would be

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871 collected, and that right is hereby conferred. In any action to
872 enforce contribution, the court shall award taxable costs as in
873 chancery actions, including reasonable attorney fees.

874 (11) FOREIGN TAX.—This section does not require the
875 personal representative or fiduciary to pay any tax levied or
876 assessed by a foreign country unless specific directions to that
877 effect are contained in the will or other instrument under which
878 the personal representative or fiduciary is acting.

879 Section 7. Section 736.1005, Florida Statutes, is amended
880 to read:

881 736.1005 Attorney ~~attorney's~~ fees for services to the
882 trust.—

883 (1) Any attorney who has rendered services to a trust may
884 be awarded reasonable compensation from the trust. The attorney
885 may apply to the court for an order awarding attorney ~~attorney's~~
886 fees and, after notice and service on the trustee and all
887 beneficiaries entitled to an accounting under s. 736.0813, the
888 court shall enter an order on the fee application.

889 (2) If attorney ~~Whenever attorney's~~ fees are to be paid
890 ~~from out of~~ the trust under subsection (1), s. 736.1007(5)(a),
891 or s. 733.106(4)(a), the court, in its discretion, may direct
892 from what part of the trust the fees shall be paid.

893 (a) All or any part of the attorney fees to be paid from
894 the trust may be assessed against one or more persons' part of
895 the trust in such proportions as the court finds to be just and
896 proper.

897 (b) In the exercise of its discretion, the court may
898 consider the following factors:

899 1. The relative impact of an assessment on the estimated

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900 value of each person's part of the trust.

901 2. The amount of attorney fees to be assessed against a
902 person's part of the trust.

903 3. The extent to which a person whose part of the trust is
904 to be assessed, individually or through counsel, actively
905 participated in the proceeding.

906 4. The potential benefit or detriment to a person's part of
907 the trust expected from the outcome of the proceeding.

908 5. The relative strength or weakness of the merits of the
909 claims, defenses, or objections, if any, asserted by a person
910 whose part of the trust is to be assessed.

911 6. Whether a person whose part of the trust is to be
912 assessed was a prevailing party with respect to one or more
913 claims, defenses, or objections.

914 7. Whether a person whose part of the trust is to be
915 assessed unjustly caused an increase in the amount of attorney
916 fees incurred by the trustee or another person in connection
917 with the proceeding.

918 8. Any other relevant fact, circumstance, or equity.

919 (c) The court may assess a person's part of the trust
920 without finding that the person engaged in bad faith,
921 wrongdoing, or frivolousness.

922 (3) Except when a trustee's interest may be adverse in a
923 particular matter, the attorney shall give reasonable notice in
924 writing to the trustee of the attorney's retention by an
925 interested person and the attorney's entitlement to fees
926 pursuant to this section. A court may reduce any fee award for
927 services rendered by the attorney prior to the date of actual
928 notice to the trustee, if the actual notice date is later than a

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929 date of reasonable notice. In exercising this discretion, the
930 court may exclude compensation for services rendered after the
931 reasonable notice date but before ~~prior to~~ the date of actual
932 notice.

933 Section 8. Section 736.1006, Florida Statutes, is amended
934 to read:

935 736.1006 Costs in trust proceedings.—

936 (1) In all trust proceedings, costs may be awarded as in
937 chancery actions.

938 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust
939 under subsection (1) or s. 733.106(4) (a), the court, in its
940 discretion, may direct from what part of the trust the costs
941 shall be paid. All or any part of the costs to be paid from the
942 trust may be assessed against one or more persons' part of the
943 trust in such proportions as the court finds to be just and
944 proper. In the exercise of its discretion, the court may
945 consider the factors set forth in s. 736.1005(2).

946 Section 9. The amendments made by this act to ss. 733.212,
947 733.2123, 733.3101, and 733.504, Florida Statutes, apply to
948 proceedings commenced on or after July 1, 2015. The law in
949 effect before July 1, 2015, applies to proceedings commenced
950 before that date.

951 Section 10. (1) The amendment made by this act to s.
952 733.817(1) (g) and (2) (c), Florida Statutes, is remedial in
953 nature, is intended to clarify existing law, and applies
954 retroactively to all proceedings pending or commenced on or
955 after July 1, 2015, in which the apportionment of taxes has not
956 been finally determined or agreed for the estates of decedents
957 who die after December 31, 2004.

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958 (2) The amendment made by this act to s. 733.817(1)(e)3.,
959 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and
960 (6), Florida Statutes, applies to the estates of decedents who
961 die on or after July 1, 2015.

962 (3) Except as provided in subsections (1) and (2), the
963 amendment made by this act to s. 733.817, Florida Statutes, is
964 remedial in nature, is intended to clarify existing law, and
965 applies retroactively to all proceedings pending or commenced on
966 or after July 1, 2015, in which the apportionment of taxes has
967 not been finally determined or agreed and without regard to the
968 date of the decedent's death.

969 Section 11. The amendments made by this act to ss. 733.106,
970 736.1005, and 736.1006, Florida Statutes, apply to proceedings
971 commenced on or after July 1, 2015. The law in effect before
972 July 1, 2015, applies to proceedings commenced before that date.

973 Section 12. This act shall take effect July 1, 2015.

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CS/CS/HB 269

2015 Legislature

1
 2 An act relating to experimental treatments for
 3 terminal conditions; creating s. 499.0295, F.S.;
 4 providing a short title; providing definitions;
 5 providing conditions for a manufacturer to provide
 6 certain drugs, products, or devices to an eligible
 7 patient; specifying insurance coverage requirements
 8 and exceptions; providing conditions for provision of
 9 certain services by a hospital or health care
 10 facility; providing immunity from liability; providing
 11 protection from disciplinary or legal action against a
 12 physician who makes certain treatment recommendations;
 13 providing that a cause of action may not be asserted
 14 against the manufacturer of certain drugs, products,
 15 or devices or a person or entity caring for a patient
 16 using such drug, product, or device under certain
 17 circumstances; providing applicability; providing an
 18 effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 499.0295, Florida Statutes, is created
 23 to read:

- 24 499.0295 Experimental treatments for terminal conditions.—
 25 (1) This section may be cited as the "Right to Try Act."
 26 (2) As used in this section, the term:

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27 (a) "Eligible patient" means a person who:
 28 1. Has a terminal condition that is attested to by the
 29 patient's physician and confirmed by a second independent
 30 evaluation by a board-certified physician in an appropriate
 31 specialty for that condition;
 32 2. Has considered all other treatment options for the
 33 terminal condition currently approved by the United States Food
 34 and Drug Administration;
 35 3. Has given written informed consent for the use of an
 36 investigational drug, biological product, or device; and
 37 4. Has documentation from his or her treating physician
 38 that the patient meets the requirements of this paragraph.
 39 (b) "Investigational drug, biological product, or device"
 40 means a drug, biological product, or device that has
 41 successfully completed phase 1 of a clinical trial but has not
 42 been approved for general use by the United States Food and Drug
 43 Administration and remains under investigation in a clinical
 44 trial approved by the United States Food and Drug
 45 Administration.
 46 (c) "Terminal condition" means a progressive disease or
 47 medical or surgical condition that causes significant functional
 48 impairment, is not considered by a treating physician to be
 49 reversible even with the administration of available treatment
 50 options currently approved by the United States Food and Drug
 51 Administration, and, without the administration of life-

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52 sustaining procedures, will result in death within 1 year after
53 diagnosis if the condition runs its normal course.

54 (d) "Written informed consent" means a document that is
55 signed by a patient, a parent of a minor patient, a court-
56 appointed guardian for a patient, or a health care surrogate
57 designated by a patient and includes:

58 1. An explanation of the currently approved products and
59 treatments for the patient's terminal condition.

60 2. An attestation that the patient concurs with his or her
61 physician in believing that all currently approved products and
62 treatments are unlikely to prolong the patient's life.

63 3. Identification of the specific investigational drug,
64 biological product, or device that the patient is seeking to
65 use.

66 4. A realistic description of the most likely outcomes of
67 using the investigational drug, biological product, or device.
68 The description shall include the possibility that new,
69 unanticipated, different, or worse symptoms might result and
70 death could be hastened by the proposed treatment. The
71 description shall be based on the physician's knowledge of the
72 proposed treatment for the patient's terminal condition.

73 5. A statement that the patient's health plan or third-
74 party administrator and physician are not obligated to pay for
75 care or treatment consequent to the use of the investigational
76 drug, biological product, or device unless required to do so by
77 law or contract.

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78 6. A statement that the patient's eligibility for hospice
 79 care may be withdrawn if the patient begins treatment with the
 80 investigational drug, biological product, or device and that
 81 hospice care may be reinstated if the treatment ends and the
 82 patient meets hospice eligibility requirements.

83 7. A statement that the patient understands he or she is
 84 liable for all expenses consequent to the use of the
 85 investigational drug, biological product, or device and that
 86 liability extends to the patient's estate, unless a contract
 87 between the patient and the manufacturer of the investigational
 88 drug, biological product, or device states otherwise.

89 (3) Upon the request of an eligible patient, a
 90 manufacturer may:

91 (a) Make its investigational drug, biological product, or
 92 device available under this section.

93 (b) Provide an investigational drug, biological product,
 94 or device to an eligible patient without receiving compensation.

95 (c) Require an eligible patient to pay the costs of, or
 96 the costs associated with, the manufacture of the
 97 investigational drug, biological product, or device.

98 (4) A health plan, third-party administrator, or
 99 governmental agency may provide coverage for the cost of, or the
 100 cost of services related to the use of, an investigational drug,
 101 biological product, or device.

102 (5) A hospital or health care facility licensed under
 103 chapter 395 is not required to provide new or additional

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104 services unless those services are approved by the hospital or
105 health care facility.

106 (6) If an eligible patient dies while using an
107 investigational drug, biological product, or device pursuant to
108 this section, the patient's heirs are not liable for any
109 outstanding debt related to the patient's use of the
110 investigational drug, biological product, or device.

111 (7) A licensing board may not revoke, fail to renew,
112 suspend, or take any action against a physician's license issued
113 under chapter 458 or chapter 459 based solely on the physician's
114 recommendations to an eligible patient regarding access to or
115 treatment with an investigational drug, biological product, or
116 device. A state entity responsible for Medicare certification
117 may not take action against a physician's Medicare certification
118 based solely on the physician's recommendation that an eligible
119 patient have access to an investigational drug, biological
120 product, or device.

121 (8) This section does not create a private cause of action
122 against the manufacturer of an investigational drug, biological
123 product, or device; against a person or entity involved in the
124 care of an eligible patient who is using the investigational
125 drug, biological product, or device; or for any harm to the
126 eligible patient that is a result of the use of the
127 investigational drug, biological product, or device if the
128 manufacturer or other person or entity complies in good faith
129 with the terms of this section and exercises reasonable care.

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130 (9) This section does not expand the coverage an insurer
131 must provide under the Florida Insurance Code and does not
132 affect mandatory health coverage for participation in clinical
133 trials.

134 Section 2. This act shall take effect July 1, 2015.

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CS/CS/CS/HB 775

2015 Legislature

1
2 An act relating to the appointment of an ad litem;
3 creating s. 49.31, F.S.; defining the term "ad litem";
4 authorizing a court to appoint an ad litem for certain
5 parties upon whom service of process by publication is
6 made; prohibiting a court from appointing an ad litem
7 to represent an interest for which a personal
8 representative, guardian of property, or trustee is
9 serving; requiring an ad litem, upon discovery that
10 the party it represents is already represented by a
11 personal representative, guardian of property, or
12 trustee, or is deceased, to take certain actions;
13 prohibiting a court from requiring an ad litem to post
14 a bond or designate a resident agent; requiring a
15 court to discharge an ad litem when the final judgment
16 is entered or as otherwise ordered by the court;
17 providing that an ad litem is entitled to an award of
18 a reasonable fee for services and costs; providing for
19 assessment; prohibiting the use of state funds except
20 in certain circumstances; prohibiting declaring
21 certain proceedings ineffective solely due to a lack
22 of statutory authority to appoint an ad litem;
23 providing construction; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

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CS/CS/CS/HB 775

2015 Legislature

27 Section 1. Section 49.31, Florida Statutes, is created to
 28 read:

29 49.31 Appointment of ad litem.—

30 (1) As used in this section, the term "ad litem" means an
 31 attorney, administrator, or guardian ad litem.

32 (2) The court may appoint an ad litem for any party,
 33 whether known or unknown, upon whom service of process by
 34 publication under this chapter has been properly made and who
 35 has failed to file or serve any paper in the action within the
 36 time required by law. A court may not appoint an ad litem to
 37 represent an interest for which a personal representative,
 38 guardian of property, or trustee is serving.

39 (a) If the court has appointed an ad litem and the ad
 40 litem discovers that a personal representative, guardian of
 41 property, or trustee is serving who represents the interest for
 42 which the ad litem was appointed, the ad litem must promptly
 43 report that finding to the court and must file a petition for
 44 discharge as to any interest for which the personal
 45 representative, guardian of property, or trustee is serving.

46 (b) If the court has appointed an ad litem to represent an
 47 interest and the ad litem discovers that the person whose
 48 interest he or she represents is deceased and there is no
 49 personal representative, guardian of property, or trustee to
 50 represent the decedent's interest, the ad litem must make a
 51 reasonable attempt to locate any spouse, heir, devisee, or
 52 beneficiary of the decedent, must report to the court the name

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53 and address of all such persons whom the ad litem locates, and
54 must petition for discharge as to any interest of the person
55 located.

56 (3) The court may not require an ad litem to post a bond
57 or designate a resident agent in order to serve as an ad litem.

58 (4) The court shall discharge the ad litem when the final
59 judgment is entered or as otherwise ordered by the court.

60 (5) The ad litem is entitled to an award of a reasonable
61 fee for services rendered and costs, which shall be assessed
62 against the party requesting the appointment of the ad litem, or
63 as otherwise ordered by the court. State funds may not be used
64 to pay fees for services rendered by the ad litem unless state
65 funds would have been expended for such services in the same
66 circumstance before July 1, 2015.

67 (6) In all cases adjudicated in which the court appointed
68 an ad litem, a proceeding may not be declared ineffective solely
69 due to lack of statutory authority to appoint an ad litem.

70 (7) This section does not abrogate a court's common law
71 authority to appoint an ad litem.

72 Section 2. This act shall take effect July 1, 2015.



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CS/CS/HB 437, Engrossed 1

2015 Legislature

1
2 An act relating to guardians for dependent children
3 who are developmentally disabled or incapacitated;
4 providing a short title; amending s. 39.6251, F.S.;
5 requiring the continued review of the necessity of
6 guardianships for young adults; amending s. 39.701,
7 F.S.; requiring an updated case plan developed in a
8 face-to-face conference with the child, if
9 appropriate, and other specified persons; providing
10 requirements for the Department of Children and
11 Families when a court determines that there is a good
12 faith basis to appoint a guardian advocate, limited
13 guardian, or plenary guardian for the child and that
14 no less restrictive decisionmaking assistance will
15 meet the child's needs; requiring the department to
16 provide specified information if another interested
17 party or participant initiates proceedings for the
18 appointment of a guardian advocate, plenary guardian,
19 or limited guardian for the child; requiring that
20 proceedings seeking appointment of a guardian advocate
21 or a determination of incapacity and the appointment
22 of a guardian be conducted in a separate proceeding in
23 guardianship court; amending s. 393.12, F.S.;
24 providing that the guardianship court has jurisdiction
25 over proceedings for appointment of a guardian
26 advocate if petitions are filed for certain minors who



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27 | are subject to chapter 39, F.S., proceedings if such
28 | minors have attained a specified age; providing that
29 | such minor has the same due process rights as certain
30 | adults; providing requirements for when an order
31 | appointing a guardian advocate must be issued;
32 | providing that proceedings seeking appointment of a
33 | guardian advocate for certain minors be conducted
34 | separately from any other proceeding; amending s.
35 | 744.301, F.S.; providing that if a child is subject to
36 | proceedings under chapter 39, F.S., the parents may
37 | act as natural guardians unless the court finds that
38 | it is not in the child's best interests or their
39 | parental rights have been terminated; amending s.
40 | 744.3021, F.S.; requiring the guardianship court to
41 | initiate proceedings for appointment of guardians for
42 | certain minors who are subject to chapter 39, F.S.,
43 | proceedings if petitions are filed and if such minors
44 | have reached a specified age; providing that such
45 | minor has the same due process rights as certain
46 | adults; providing requirements for when an order of
47 | adjudication and letters of limited or plenary
48 | guardianship must be issued; providing that
49 | proceedings seeking appointment of a guardian advocate
50 | for certain minors be conducted separately from any
51 | other proceeding; providing an effective date.

52



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2015 Legislature

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

54

55 Section 1. This act may be cited as "The Regis Little Act
56 to Protect Children with Special Needs."

57 Section 2. Subsection (8) of section 39.6251, Florida
58 Statutes, is amended to read:

59 39.6251 Continuing care for young adults.—

60 (8) During the time that a young adult is in care, the
61 court shall maintain jurisdiction to ensure that the department
62 and the lead agencies are providing services and coordinate
63 with, and maintain oversight of, other agencies involved in
64 implementing the young adult's case plan, individual education
65 plan, and transition plan. The court shall review the status of
66 the young adult at least every 6 months and hold a permanency
67 review hearing at least annually. If the young adult is
68 appointed a guardian under chapter 744 or a guardian advocate
69 under s. 393.12, at the permanency review hearing the court
70 shall review the necessity of continuing the guardianship and
71 whether restoration of guardianship proceedings are needed when
72 the young adult reaches 22 years of age. The court may appoint a
73 guardian ad litem or continue the appointment of a guardian ad
74 litem with the young adult's consent. The young adult or any
75 other party to the dependency case may request an additional
76 hearing or review.

77 Section 3. Paragraphs (b) and (c) of subsection (3) of
78 section 39.701, Florida Statutes, are amended to read:



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79 39.701 Judicial review.—

80 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

81 (b) At the first judicial review hearing held subsequent
82 to the child's 17th birthday, the department shall provide the
83 court with an updated case plan that includes specific
84 information related to the independent living skills that the
85 child has acquired since the child's 13th birthday, or since the
86 date the child came into foster care, whichever came later.

87 1. For any child that may meet the requirements for
88 appointment of a guardian pursuant to chapter 744, or a guardian
89 advocate pursuant to s. 393.12, the updated case plan must be
90 developed in a face-to-face conference with the child, if
91 appropriate; the child's attorney; any court-appointed guardian
92 ad litem; the temporary custodian of the child; and the parent,
93 if the parent's rights have not been terminated.

94 2. At the judicial review hearing, if the court determines
95 pursuant to chapter 744 that there is a good faith basis to
96 believe that the child qualifies for appointment of a guardian
97 advocate, limited guardian, or plenary guardian for the child
98 and that no less restrictive decisionmaking assistance will meet
99 the child's needs:

100 a. The department shall complete a multidisciplinary
101 report which must include, but is not limited to, a psychosocial
102 evaluation and educational report if such a report has not been
103 completed within the previous 2 years.

104 b. The department shall identify one or more individuals



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105 who are willing to serve as the guardian advocate pursuant to s.
106 393.12 or as the plenary or limited guardian pursuant to chapter
107 744. Any other interested parties or participants may make
108 efforts to identify such a guardian advocate, limited guardian,
109 or plenary guardian. The child's biological or adoptive family
110 members, including the child's parents if the parents' rights
111 have not been terminated, may not be considered for service as
112 the plenary or limited guardian unless the court enters a
113 written order finding that such an appointment is in the child's
114 best interests.

115 c. Proceedings may be initiated within 180 days after the
116 child's 17th birthday for the appointment of a guardian
117 advocate, plenary guardian, or limited guardian for the child in
118 a separate proceeding in the court division with jurisdiction
119 over guardianship matters and pursuant to chapter 744. The
120 Legislature encourages the use of pro bono representation to
121 initiate proceedings under this section.

122 3. In the event another interested party or participant
123 initiates proceedings for the appointment of a guardian
124 advocate, plenary guardian, or limited guardian for the child,
125 the department shall provide all necessary documentation and
126 information to the petitioner to complete a petition under s.
127 393.12 or chapter 744 within 45 days after the first judicial
128 review hearing after the child's 17th birthday.

129 4. Any proceedings seeking appointment of a guardian
130 advocate or a determination of incapacity and the appointment of



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131 a guardian must be conducted in a separate proceeding in the
132 court division with jurisdiction over guardianship matters and
133 pursuant to chapter 744.

134 (c) If the court finds at the judicial review hearing that
135 the department has not met its obligations to the child as
136 stated in this part, in the written case plan, or in the
137 provision of independent living services, the court may issue an
138 order directing the department to show cause as to why it has
139 not done so. If the department cannot justify its noncompliance,
140 the court may give the department 30 days within which to
141 comply. If the department fails to comply within 30 days, the
142 court may hold the department in contempt.

143 Section 4. Paragraph (c) is added to subsection (2) of
144 section 393.12, Florida Statutes, to read:

145 393.12 Capacity; appointment of guardian advocate.—

146 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

147 (c) If a petition is filed pursuant to this section
148 requesting appointment of a guardian advocate for a minor who is
149 the subject of any proceeding under chapter 39, the court
150 division with jurisdiction over guardianship matters has
151 jurisdiction over the proceedings pursuant to this section when
152 the minor reaches the age of 17 years and 6 months or anytime
153 thereafter. The minor shall be provided all the due process
154 rights conferred upon an alleged developmentally disabled adult
155 pursuant to this chapter. The order of appointment of a guardian
156 advocate under this section shall issue upon the minor's 18th



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157 birthday or as soon thereafter as possible. Any proceeding
158 pursuant to this paragraph shall be conducted separately from
159 any other proceeding.

160 Section 5. Subsection (1) of section 744.301, Florida
161 Statutes, is amended to read:

162 744.301 Natural guardians.—

163 (1) The parents jointly are the natural guardians of their
164 own children and of their adopted children, during minority,
165 unless the parents' parental rights have been terminated
166 pursuant to chapter 39. If a child is the subject of any
167 proceeding under chapter 39, the parents may act as natural
168 guardians under this section unless the court division with
169 jurisdiction over guardianship matters finds that it is not in
170 the child's best interests. If one parent dies, the surviving
171 parent remains the sole natural guardian even if he or she
172 remarries. If the marriage between the parents is dissolved, the
173 natural guardianship belongs to the parent to whom sole parental
174 responsibility has been granted, or if the parents have been
175 granted shared parental responsibility, both continue as natural
176 guardians. If the marriage is dissolved and neither parent is
177 given parental responsibility for the child, neither may act as
178 natural guardian of the child. The mother of a child born out of
179 wedlock is the natural guardian of the child and is entitled to
180 primary residential care and custody of the child unless the
181 court enters an order stating otherwise.

182 Section 6. Subsection (1) of section 744.3021, Florida



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183 Statutes, is amended, and subsection (4) is added to that
184 section, to read:

185 744.3021 Guardians of minors.—

186 (1) Except as provided in subsection (4), upon petition of
187 a parent, brother, sister, next of kin, or other person
188 interested in the welfare of a minor, a guardian for a minor may
189 be appointed by the court without the necessity of adjudication
190 pursuant to s. 744.331. A guardian appointed for a minor,
191 whether of the person or property, has the authority of a
192 plenary guardian.

193 (4) If a petition is filed pursuant to this section
194 requesting appointment of a guardian for a minor who is the
195 subject of any proceeding under chapter 39 and who is aged 17
196 years and 6 months or older, the court division with
197 jurisdiction over guardianship matters has jurisdiction over the
198 proceedings under s. 744.331. The alleged incapacitated minor
199 under this subsection shall be provided all the due process
200 rights conferred upon an alleged incapacitated adult pursuant to
201 this chapter and applicable court rules. The order of
202 adjudication under s. 744.331 and the letters of limited or
203 plenary guardianship may issue upon the minor's 18th birthday or
204 as soon thereafter as possible. Any proceeding pursuant to this
205 subsection shall be conducted separately from any other
206 proceeding.

207 Section 7. This act shall take effect July 1, 2015.

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1
2 An act relating to transitional living facilities;
3 creating part XI of ch. 400, F.S.; creating s.
4 400.997, F.S.; providing legislative intent; creating
5 s. 400.9971, F.S.; providing definitions; creating s.
6 400.9972, F.S.; requiring the licensure of
7 transitional living facilities; providing license fees
8 and application requirements; requiring accreditation
9 of licensed facilities; creating s. 400.9973, F.S.;
10 providing requirements for transitional living
11 facility policies and procedures governing client
12 admission, transfer, and discharge; creating s.
13 400.9974, F.S.; requiring a comprehensive treatment
14 plan to be developed for each client; providing plan
15 and staffing requirements; requiring certain consent
16 for continued treatment in a transitional living
17 facility; creating s. 400.9975, F.S.; providing
18 licensee responsibilities with respect to each client
19 and specified others and requiring written notice of
20 such responsibilities to be provided; prohibiting a
21 licensee or employee of a facility from serving notice
22 upon a client to leave the premises or taking other
23 retaliatory action under certain circumstances;
24 requiring the client and client's representative to be
25 provided with certain information; requiring the
26 licensee to develop and implement certain policies and
27 procedures governing the release of client
28 information; creating s. 400.9976, F.S.; providing
29 licensee requirements relating to administration of

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30 medication; requiring maintenance of medication
31 administration records; providing requirements for the
32 self-administration of medication by clients; creating
33 s. 400.9977, F.S.; providing training and supervision
34 requirements for the administration of medications by
35 unlicensed staff; specifying who may conduct the
36 training; requiring licensees to adopt certain
37 policies and procedures and maintain specified records
38 with respect to the administration of medications by
39 unlicensed staff; requiring the Agency for Health Care
40 Administration to adopt rules; creating s. 400.9978,
41 F.S.; providing requirements for the screening of
42 potential employees and training and monitoring of
43 employees for the protection of clients; requiring
44 licensees to implement certain policies and procedures
45 to protect clients; providing conditions for
46 investigating and reporting incidents of abuse,
47 neglect, mistreatment, or exploitation of clients;
48 creating s. 400.9979, F.S.; providing requirements and
49 limitations for the use of physical restraints,
50 seclusion, and chemical restraint medication on
51 clients; providing a limitation on the duration of an
52 emergency treatment order; requiring notification of
53 certain persons when restraint or seclusion is
54 imposed; authorizing the agency to adopt rules;
55 creating s. 400.998, F.S.; providing background
56 screening requirements for licensee personnel;
57 requiring the licensee to maintain certain personnel
58 records; providing administrative responsibilities for

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59 licensees; providing recordkeeping requirements;
60 creating s. 400.9981, F.S.; providing licensee
61 responsibilities with respect to the property and
62 personal affairs of clients; providing requirements
63 for a licensee with respect to obtaining surety bonds;
64 providing recordkeeping requirements relating to the
65 safekeeping of personal effects; providing
66 requirements for trust funds or other property
67 received by a licensee and credited to the client;
68 providing a penalty for certain misuse of a client's
69 personal funds, property, or personal needs allowance;
70 providing criminal penalties for violations; providing
71 for the disposition of property in the event of the
72 death of a client; authorizing the agency to adopt
73 rules; creating s. 400.9982, F.S.; providing
74 legislative intent; authorizing the agency to adopt
75 and enforce rules establishing specified standards for
76 transitional living facilities and personnel thereof;
77 creating s. 400.9983, F.S.; classifying certain
78 violations and providing penalties therefor; providing
79 administrative fines for specified classes of
80 violations; creating s. 400.9984, F.S.; authorizing
81 the agency to apply certain provisions with regard to
82 receivership proceedings; creating s. 400.9985, F.S.;
83 requiring the agency, the Department of Health, the
84 Agency for Persons with Disabilities, and the
85 Department of Children and Families to develop
86 electronic information systems for certain purposes;
87 transferring and renumbering s. 400.805, F.S., as s.

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88 400.9986, F.S.; repealing s. 400.9986, F.S., relating
89 to transitional living facilities, on a specified
90 date; revising the title of part V of ch. 400, F.S.;
91 amending s. 381.745, F.S.; revising the definition of
92 the term "transitional living facility," to conform to
93 changes made by the act; amending s. 381.75, F.S.;
94 revising the duties of the Department of Health and
95 the agency relating to transitional living facilities;
96 amending ss. 381.78, 400.93, 408.802, and 408.820,
97 F.S.; conforming provisions to changes made by the
98 act; reenacting s. 381.79(1), F.S., relating to the
99 Brain and Spinal Cord Injury Program Trust Fund, to
100 incorporate the amendment made by the act to s.
101 381.75, F.S., in a reference thereto; providing for
102 the act's applicability to licensed transitional
103 living facilities licensed on specified dates;
104 providing effective dates.

105
106 Be It Enacted by the Legislature of the State of Florida:

107
108 Section 1. Part XI of chapter 400, Florida Statutes,
109 consisting of sections 400.997 through 400.9986, is created to
110 read:

111 PART XI

112 TRANSITIONAL LIVING FACILITIES

113 400.997 Legislative intent.—It is the intent of the
114 Legislature to provide for the licensure of transitional living
115 facilities and require the development, establishment, and
116 enforcement of basic standards by the Agency for Health Care

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117 Administration to ensure quality of care and services to clients
118 in transitional living facilities. It is the policy of the state
119 that the least restrictive appropriate available treatment be
120 used based on the individual needs and best interest of the
121 client, consistent with optimum improvement of the client's
122 condition. The goal of a transitional living program for persons
123 who have brain or spinal cord injuries is to assist each person
124 who has such an injury to achieve a higher level of independent
125 functioning and to enable the person to reenter the community.
126 It is also the policy of the state that the restraint or
127 seclusion of a client is justified only as an emergency safety
128 measure used in response to danger to the client or others. It
129 is therefore the intent of the Legislature to achieve an ongoing
130 reduction in the use of restraint or seclusion in programs and
131 facilities that serve persons who have brain or spinal cord
132 injuries.

133 400.9971 Definitions.—As used in this part, the term:

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

136 (2) "Chemical restraint" means a pharmacologic drug that
137 physically limits, restricts, or deprives a person of movement
138 or mobility, is used for client protection or safety, and is not
139 required for the treatment of medical conditions or symptoms.

140 (3) "Client's representative" means the parent of a child
141 client or the client's guardian, designated representative,
142 designee, surrogate, or attorney in fact.

143 (4) "Department" means the Department of Health.

144 (5) "Physical restraint" means a manual method to restrict
145 freedom of movement of or normal access to a person's body, or a

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146 physical or mechanical device, material, or equipment attached
147 or adjacent to the person's body that the person cannot easily
148 remove and that restricts freedom of movement of or normal
149 access to the person's body, including, but not limited to, a
150 half-bed rail, a full-bed rail, a geriatric chair, or a Posey
151 restraint. The term includes any device that is not specifically
152 manufactured as a restraint but is altered, arranged, or
153 otherwise used for this purpose. The term does not include
154 bandage material used for the purpose of binding a wound or
155 injury.

156 (6) "Seclusion" means the physical segregation of a person
157 in any fashion or the involuntary isolation of a person in a
158 room or area from which the person is prevented from leaving.
159 Such prevention may be accomplished by imposition of a physical
160 barrier or by action of a staff member to prevent the person
161 from leaving the room or area. For purposes of this part, the
162 term does not mean isolation due to a person's medical condition
163 or symptoms.

164 (7) "Transitional living facility" means a site where
165 specialized health care services are provided to persons who
166 have brain or spinal cord injuries, including, but not limited
167 to, rehabilitative services, behavior modification, community
168 reentry training, aids for independent living, and counseling.

169 400.9972 License required; fee; application.—

170 (1) The requirements of part II of chapter 408 apply to the
171 provision of services that require licensure pursuant to this
172 part and part II of chapter 408 and to entities licensed by or
173 applying for licensure from the agency pursuant to this part. A
174 license issued by the agency is required for the operation of a

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175 transitional living facility in this state. However, this part
176 does not require a provider licensed by the agency to obtain a
177 separate transitional living facility license to serve persons
178 who have brain or spinal cord injuries as long as the services
179 provided are within the scope of the provider's license.

180 (2) In accordance with this part, an applicant or a
181 licensee shall pay a fee for each license application submitted
182 under this part. The license fee shall consist of a \$4,588
183 license fee and a \$90 per-bed fee per biennium and shall conform
184 to the annual adjustment authorized in s. 408.805.

185 (3) An applicant for licensure must provide:

186 (a) The location of the facility for which the license is
187 sought and documentation, signed by the appropriate local
188 government official, which states that the applicant has met
189 local zoning requirements.

190 (b) Proof of liability insurance as provided in s.
191 624.605(1)(b).

192 (c) Proof of compliance with local zoning requirements,
193 including compliance with the requirements of chapter 419 if the
194 proposed facility is a community residential home.

195 (d) Proof that the facility has received a satisfactory
196 firesafety inspection.

197 (e) Documentation that the facility has received a
198 satisfactory sanitation inspection by the county health
199 department.

200 (4) The applicant's proposed facility must attain and
201 continuously maintain accreditation by an accrediting
202 organization that specializes in evaluating rehabilitation
203 facilities whose standards incorporate licensure regulations

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204 comparable to those required by the state. An applicant for
205 licensure as a transitional living facility must acquire
206 accreditation within 12 months after issuance of an initial
207 license. The agency shall accept the accreditation survey report
208 of the accrediting organization in lieu of conducting a
209 licensure inspection if the standards included in the survey
210 report are determined by the agency to document that the
211 facility substantially complies with state licensure
212 requirements. Within 10 days after receiving the accreditation
213 survey report, the applicant shall submit to the agency a copy
214 of the report and evidence of the accreditation decision as a
215 result of the report. The agency may conduct an inspection of a
216 transitional living facility to ensure compliance with the
217 licensure requirements of this part, to validate the inspection
218 process of the accrediting organization, to respond to licensure
219 complaints, or to protect the public health and safety.

220 400.9973 Client admission, transfer, and discharge.-

221 (1) A transitional living facility shall have written
222 policies and procedures governing the admission, transfer, and
223 discharge of clients.

224 (2) The admission of a client to a transitional living
225 facility must be in accordance with the licensee's policies and
226 procedures.

227 (3) To be admitted to a transitional living facility, an
228 individual must have an acquired internal or external injury to
229 the skull, the brain, or the brain's covering, caused by a
230 traumatic or nontraumatic event, which produces an altered state
231 of consciousness, or a spinal cord injury, such as a lesion to
232 the spinal cord or cauda equina syndrome, with evidence of

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233 significant involvement of at least two of the following
234 deficits or dysfunctions:
235 (a) A motor deficit.
236 (b) A sensory deficit.
237 (c) A cognitive deficit.
238 (d) A behavioral deficit.
239 (e) Bowel and bladder dysfunction.
240 (4) A client whose medical condition and diagnosis do not
241 positively identify a cause of the client's condition, whose
242 symptoms are inconsistent with the known cause of injury, or
243 whose recovery is inconsistent with the known medical condition
244 may be admitted to a transitional living facility for evaluation
245 for a period not to exceed 90 days.
246 (5) A client admitted to a transitional living facility
247 must be admitted upon prescription by a licensed physician,
248 physician assistant, or advanced registered nurse practitioner
249 and must remain under the care of a licensed physician,
250 physician assistant, or advanced registered nurse practitioner
251 for the duration of the client's stay in the facility.
252 (6) A transitional living facility may not admit a person
253 whose primary admitting diagnosis is mental illness or an
254 intellectual or developmental disability.
255 (7) A person may not be admitted to a transitional living
256 facility if the person:
257 (a) Presents significant risk of infection to other clients
258 or personnel. A health care practitioner must provide
259 documentation that the person is free of apparent signs and
260 symptoms of communicable disease;
261 (b) Is a danger to himself or herself or others as

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262 determined by a physician, physician assistant, or advanced
263 registered nurse practitioner or a mental health practitioner
264 licensed under chapter 490 or chapter 491, unless the facility
265 provides adequate staffing and support to ensure patient safety;

266 (c) Is bedridden; or

267 (d) Requires 24-hour nursing supervision.

268 (8) If the client meets the admission criteria, the medical
269 or nursing director of the facility must complete an initial
270 evaluation of the client's functional skills, behavioral status,
271 cognitive status, educational or vocational potential, medical
272 status, psychosocial status, sensorimotor capacity, and other
273 related skills and abilities within the first 72 hours after the
274 client's admission to the facility. An initial comprehensive
275 treatment plan that delineates services to be provided and
276 appropriate sources for such services must be implemented within
277 the first 4 days after admission.

278 (9) A transitional living facility shall develop a
279 discharge plan for each client before or upon admission to the
280 facility. The discharge plan must identify the intended
281 discharge site and possible alternative discharge sites. For
282 each discharge site identified, the discharge plan must identify
283 the skills, behaviors, and other conditions that the client must
284 achieve to be eligible for discharge. A discharge plan must be
285 reviewed and updated as necessary but at least once monthly.

286 (10) A transitional living facility shall discharge a
287 client as soon as practicable when the client no longer requires
288 the specialized services described in s. 400.9971(7), when the
289 client is not making measurable progress in accordance with the
290 client's comprehensive treatment plan, or when the transitional

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291 living facility is no longer the most appropriate and least
292 restrictive treatment option.

293 (11) A transitional living facility shall provide at least
294 30 days' notice to a client of transfer or discharge plans,
295 including the location of an acceptable transfer location if the
296 client is unable to live independently. This subsection does not
297 apply if a client voluntarily terminates residency.

298 400.9974 Client comprehensive treatment plans; client
299 services.-

300 (1) A transitional living facility shall develop a
301 comprehensive treatment plan for each client as soon as
302 practicable but no later than 30 days after the initial
303 comprehensive treatment plan is developed. The comprehensive
304 treatment plan must be developed by an interdisciplinary team
305 consisting of the case manager, the program director, the
306 advanced registered nurse practitioner, and appropriate
307 therapists. The client or, if appropriate, the client's
308 representative must be included in developing the comprehensive
309 treatment plan. The comprehensive treatment plan must be
310 reviewed and updated if the client fails to meet projected
311 improvements outlined in the plan or if a significant change in
312 the client's condition occurs. The comprehensive treatment plan
313 must be reviewed and updated at least once monthly.

314 (2) The comprehensive treatment plan must include:

315 (a) Orders obtained from the physician, physician
316 assistant, or advanced registered nurse practitioner and the
317 client's diagnosis, medical history, physical examination, and
318 rehabilitative or restorative needs.

319 (b) A preliminary nursing evaluation, including orders for

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320 immediate care provided by the physician, physician assistant,
321 or advanced registered nurse practitioner, which shall be
322 completed when the client is admitted.

323 (c) A comprehensive, accurate, reproducible, and
324 standardized assessment of the client's functional capability;
325 the treatments designed to achieve skills, behaviors, and other
326 conditions necessary for the client to return to the community;
327 and specific measurable goals.

328 (d) Steps necessary for the client to achieve transition
329 into the community and estimated length of time to achieve those
330 goals.

331 (3) The client or, if appropriate, the client's
332 representative must consent to the continued treatment at the
333 transitional living facility. Consent may be for a period of up
334 to 6 months. If such consent is not given, the transitional
335 living facility shall discharge the client as soon as
336 practicable.

337 (4) A client must receive the professional program services
338 needed to implement the client's comprehensive treatment plan.

339 (5) The licensee must employ qualified professional staff
340 to carry out and monitor the various professional interventions
341 in accordance with the stated goals and objectives of the
342 client's comprehensive treatment plan.

343 (6) A client must receive a continuous treatment program
344 that includes appropriate, consistent implementation of
345 specialized and general training, treatment, health services,
346 and related services and that is directed toward:

347 (a) The acquisition of the behaviors and skills necessary
348 for the client to function with as much self-determination and

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349 independence as possible.

350 (b) The prevention or deceleration of regression or loss of
351 current optimal functional status.

352 (c) The management of behavioral issues that preclude
353 independent functioning in the community.

354 400.9975 Licensee responsibilities.—

355 (1) The licensee shall ensure that each client:

356 (a) Lives in a safe environment free from abuse, neglect,
357 and exploitation.

358 (b) Is treated with consideration and respect and with due
359 recognition of personal dignity, individuality, and the need for
360 privacy.

361 (c) Retains and uses his or her own clothes and other
362 personal property in his or her immediate living quarters to
363 maintain individuality and personal dignity, except when the
364 licensee demonstrates that such retention and use would be
365 unsafe, impractical, or an infringement upon the rights of other
366 clients.

367 (d) Has unrestricted private communication, including
368 receiving and sending unopened correspondence, access to a
369 telephone, and visits with any person of his or her choice. Upon
370 request, the licensee shall modify visiting hours for caregivers
371 and guests. The facility shall restrict communication in
372 accordance with any court order or written instruction of a
373 client's representative. Any restriction on a client's
374 communication for therapeutic reasons shall be documented and
375 reviewed at least weekly and shall be removed as soon as no
376 longer clinically indicated. The basis for the restriction shall
377 be explained to the client and, if applicable, the client's

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378 representative. The client shall retain the right to call the
379 central abuse hotline, the agency, and Disability Rights Florida
380 at any time.

381 (e) Has the opportunity to participate in and benefit from
382 community services and activities to achieve the highest
383 possible level of independence, autonomy, and interaction within
384 the community.

385 (f) Has the opportunity to manage his or her financial
386 affairs unless the client or, if applicable, the client's
387 representative authorizes the administrator of the facility to
388 provide safekeeping for funds as provided under this part.

389 (g) Has reasonable opportunity for regular exercise more
390 than once per week and to be outdoors at regular and frequent
391 intervals except when prevented by inclement weather.

392 (h) Has the opportunity to exercise civil and religious
393 liberties, including the right to independent personal
394 decisions. However, a religious belief or practice, including
395 attendance at religious services, may not be imposed upon any
396 client.

397 (i) Has access to adequate and appropriate health care
398 consistent with established and recognized community standards.

399 (j) Has the opportunity to present grievances and recommend
400 changes in policies, procedures, and services to the staff of
401 the licensee, governing officials, or any other person without
402 restraint, interference, coercion, discrimination, or reprisal.
403 A licensee shall establish a grievance procedure to facilitate a
404 client's ability to present grievances, including a system for
405 investigating, tracking, managing, and responding to complaints
406 by a client or, if applicable, the client's representative and

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407 an appeals process. The appeals process must include access to
408 Disability Rights Florida and other advocates and the right to
409 be a member of, be active in, and associate with advocacy or
410 special interest groups.

411 (2) The licensee shall:

412 (a) Promote participation of the client's representative in
413 the process of providing treatment to the client unless the
414 representative's participation is unobtainable or inappropriate.

415 (b) Answer communications from the client's family,
416 guardians, and friends promptly and appropriately.

417 (c) Promote visits by persons with a relationship to the
418 client at any reasonable hour, without requiring prior notice,
419 in any area of the facility that provides direct care services
420 to the client, consistent with the client's and other clients'
421 privacy, unless the interdisciplinary team determines that such
422 a visit would not be appropriate.

423 (d) Promote opportunities for the client to leave the
424 facility for visits, trips, or vacations.

425 (e) Promptly notify the client's representative of a
426 significant incident or change in the client's condition,
427 including, but not limited to, serious illness, accident, abuse,
428 unauthorized absence, or death.

429 (3) The administrator of a facility shall ensure that a
430 written notice of licensee responsibilities is posted in a
431 prominent place in each building where clients reside and is
432 read or explained to clients who cannot read. This notice shall
433 be provided to clients in a manner that is clearly legible,
434 shall include the statewide toll-free telephone number for
435 reporting complaints to the agency, and shall include the words:

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436 "To report a complaint regarding the services you receive,
437 please call toll-free ...[telephone number]... or Disability
438 Rights Florida ...[telephone number]...." The statewide toll-
439 free telephone number for the central abuse hotline shall be
440 provided to clients in a manner that is clearly legible and
441 shall include the words: "To report abuse, neglect, or
442 exploitation, please call toll-free ...[telephone number]...."
443 The licensee shall ensure a client's access to a telephone where
444 telephone numbers are posted as required by this subsection.

445 (4) A licensee or employee of a facility may not serve
446 notice upon a client to leave the premises or take any other
447 retaliatory action against another person solely because of the
448 following:

449 (a) The client or other person files an internal or
450 external complaint or grievance regarding the facility.

451 (b) The client or other person appears as a witness in a
452 hearing inside or outside the facility.

453 (5) Before or at the time of admission, the client and, if
454 applicable, the client's representative shall receive a copy of
455 the licensee's responsibilities, including grievance procedures
456 and telephone numbers, as provided in this section.

457 (6) The licensee must develop and implement policies and
458 procedures governing the release of client information,
459 including consent necessary from the client or, if applicable,
460 the client's representative.

461 400.9976 Administration of medication.—

462 (1) An individual medication administration record must be
463 maintained for each client. A dose of medication, including a
464 self-administered dose, shall be properly recorded in the

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465 client's record. A client who self-administers medication shall
466 be given a pill organizer. Medication must be placed in the pill
467 organizer by a nurse. A nurse shall document the date and time
468 that medication is placed into each client's pill organizer. All
469 medications must be administered in compliance with orders of a
470 physician, physician assistant, or advanced registered nurse
471 practitioner.

472 (2) If an interdisciplinary team determines that self-
473 administration of medication is an appropriate objective, and if
474 the physician, physician assistant, or advanced registered nurse
475 practitioner does not specify otherwise, the client must be
476 instructed by the physician, physician assistant, or advanced
477 registered nurse practitioner to self-administer his or her
478 medication without the assistance of a staff person. All forms
479 of self-administration of medication, including administration
480 orally, by injection, and by suppository, shall be included in
481 the training. The client's physician, physician assistant, or
482 advanced registered nurse practitioner must be informed of the
483 interdisciplinary team's decision that self-administration of
484 medication is an objective for the client. A client may not
485 self-administer medication until he or she demonstrates the
486 competency to take the correct medication in the correct dosage
487 at the correct time, to respond to missed doses, and to contact
488 the appropriate person with questions.

489 (3) Medication administration discrepancies and adverse
490 drug reactions must be recorded and reported immediately to a
491 physician, physician assistant, or advanced registered nurse
492 practitioner.

493 400.9977 Assistance with medication.-

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494 (1) Notwithstanding any provision of part I of chapter
495 464, the Nurse Practice Act, unlicensed direct care services
496 staff who provide services to clients in a facility licensed
497 under this part may administer prescribed, prepackaged, and
498 premeasured medications after the completion of training in
499 medication administration and under the general supervision of a
500 registered nurse as provided under this section and applicable
501 rules.

502 (2) Training required by this section and applicable rules
503 shall be conducted by a registered nurse licensed under chapter
504 464, a physician licensed under chapter 458 or chapter 459, or a
505 pharmacist licensed under chapter 465.

506 (3) A facility that allows unlicensed direct care service
507 staff to administer medications pursuant to this section shall:

508 (a) Develop and implement policies and procedures that
509 include a plan to ensure the safe handling, storage, and
510 administration of prescription medications.

511 (b) Maintain written evidence of the expressed and informed
512 consent for each client.

513 (c) Maintain a copy of the written prescription, including
514 the name of the medication, the dosage, and the administration
515 schedule and termination date.

516 (d) Maintain documentation of compliance with required
517 training.

518 (4) The agency shall adopt rules to implement this section.

519 400.9978 Protection of clients from abuse, neglect,
520 mistreatment, and exploitation.—The licensee shall develop and
521 implement policies and procedures for the screening and training
522 of employees; the protection of clients; and the prevention,

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523 identification, investigation, and reporting of abuse, neglect,
524 mistreatment, and exploitation. The licensee shall identify
525 clients whose personal histories render them at risk for abusing
526 other clients, develop intervention strategies to prevent
527 occurrences of abuse, monitor clients for changes that would
528 trigger abusive behavior, and reassess the interventions on a
529 regular basis. A licensee shall:

530 (1) Screen each potential employee for a history of abuse,
531 neglect, mistreatment, or exploitation of clients. The screening
532 shall include an attempt to obtain information from previous and
533 current employers and verification of screening information by
534 the appropriate licensing boards.

535 (2) Train employees through orientation and ongoing
536 sessions regarding issues related to abuse prohibition
537 practices, including identification of abuse, neglect,
538 mistreatment, and exploitation; appropriate interventions to
539 address aggressive or catastrophic reactions of clients; the
540 process for reporting allegations without fear of reprisal; and
541 recognition of signs of frustration and stress that may lead to
542 abuse.

543 (3) Provide clients, families, and staff with information
544 regarding how and to whom they may report concerns, incidents,
545 and grievances without fear of retribution and provide feedback
546 regarding the concerns that are expressed. A licensee shall
547 identify, correct, and intervene in situations in which abuse,
548 neglect, mistreatment, or exploitation is likely to occur,
549 including:

550 (a) Evaluating the physical environment of the facility to
551 identify characteristics that may make abuse or neglect more

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552 likely to occur, such as secluded areas.

553 (b) Providing sufficient staff on each shift to meet the
554 needs of the clients and ensuring that the assigned staff have
555 knowledge of each client's care needs.

556 (c) Identifying inappropriate staff behaviors, such as
557 using derogatory language, rough handling of clients, ignoring
558 clients while giving care, and directing clients who need
559 toileting assistance to urinate or defecate in their beds.

560 (d) Assessing, monitoring, and planning care for clients
561 with needs and behaviors that might lead to conflict or neglect,
562 such as a history of aggressive behaviors including entering
563 other clients' rooms without permission, exhibiting self-
564 injurious behaviors or communication disorders, requiring
565 intensive nursing care, or being totally dependent on staff.

566 (4) Identify events, such as suspicious bruising of
567 clients, occurrences, patterns, and trends that may constitute
568 abuse and determine the direction of the investigation.

569 (5) Investigate alleged violations and different types of
570 incidents, identify the staff member responsible for initial
571 reporting, and report results to the proper authorities. The
572 licensee shall analyze the incidents to determine whether
573 policies and procedures need to be changed to prevent further
574 incidents and take necessary corrective actions.

575 (6) Protect clients from harm during an investigation.

576 (7) Report alleged violations and substantiated incidents,
577 as required under chapters 39 and 415, to the licensing
578 authorities and all other agencies, as required, and report any
579 knowledge of actions by a court of law that would indicate an
580 employee is unfit for service.

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581 400.9979 Restraint and seclusion; client safety.-

582 (1) A facility shall provide a therapeutic milieu that
583 supports a culture of individual empowerment and responsibility.
584 The health and safety of the client shall be the facility's
585 primary concern at all times.

586 (2) The use of physical restraints must be ordered and
587 documented by a physician, physician assistant, or advanced
588 registered nurse practitioner and must be consistent with the
589 policies and procedures adopted by the facility. The client or,
590 if applicable, the client's representative shall be informed of
591 the facility's physical restraint policies and procedures when
592 the client is admitted.

593 (3) The use of chemical restraints shall be limited to
594 prescribed dosages of medications as ordered by a physician,
595 physician assistant, or advanced registered nurse practitioner
596 and must be consistent with the client's diagnosis and the
597 policies and procedures adopted by the facility. The client and,
598 if applicable, the client's representative shall be informed of
599 the facility's chemical restraint policies and procedures when
600 the client is admitted.

601 (4) Based on the assessment by a physician, physician
602 assistant, or advanced registered nurse practitioner, if a
603 client exhibits symptoms that present an immediate risk of
604 injury or death to himself or herself or others, a physician,
605 physician assistant, or advanced registered nurse practitioner
606 may issue an emergency treatment order to immediately administer
607 rapid-response psychotropic medications or other chemical
608 restraints. Each emergency treatment order must be documented
609 and maintained in the client's record.

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610 (a) An emergency treatment order is not effective for more
611 than 24 hours.

612 (b) Whenever a client is medicated under this subsection,
613 the client's representative or a responsible party and the
614 client's physician, physician assistant, or advanced registered
615 nurse practitioner shall be notified as soon as practicable.

616 (5) A client who is prescribed and receives a medication
617 that can serve as a chemical restraint for a purpose other than
618 an emergency treatment order must be evaluated by his or her
619 physician, physician assistant, or advanced registered nurse
620 practitioner at least monthly to assess:

621 (a) The continued need for the medication.

622 (b) The level of the medication in the client's blood.

623 (c) The need for adjustments to the prescription.

624 (6) The licensee shall ensure that clients are free from
625 unnecessary drugs and physical restraints and are provided
626 treatment to reduce dependency on drugs and physical restraints.

627 (7) The licensee may only employ physical restraints and
628 seclusion as authorized by the facility's written policies,
629 which shall comply with this section and applicable rules.

630 (8) Interventions to manage dangerous client behavior shall
631 be employed with sufficient safeguards and supervision to ensure
632 that the safety, welfare, and civil and human rights of a client
633 are adequately protected.

634 (9) A facility shall notify the parent, guardian, or, if
635 applicable, the client's representative when restraint or
636 seclusion is employed. The facility must provide the
637 notification within 24 hours after the restraint or seclusion is
638 employed. Reasonable efforts must be taken to notify the parent,

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639 guardian, or, if applicable, the client's representative by
640 telephone or e-mail, or both, and these efforts must be
641 documented.

642 (10) The agency may adopt rules that establish standards
643 and procedures for the use of restraints, restraint positioning,
644 seclusion, and emergency treatment orders for psychotropic
645 medications, restraint, and seclusion. If rules are adopted, the
646 rules must include duration of restraint, staff training,
647 observation of the client during restraint, and documentation
648 and reporting standards.

649 400.998 Personnel background screening; administration and
650 management procedures.-

651 (1) The agency shall require level 2 background screening
652 for licensee personnel as required in s. 408.809(1)(e) and
653 pursuant to chapter 435 and s. 408.809.

654 (2) The licensee shall maintain personnel records for each
655 staff member that contain, at a minimum, documentation of
656 background screening, a job description, documentation of
657 compliance with the training requirements of this part and
658 applicable rules, the employment application, references, a copy
659 of each job performance evaluation, and, for each staff member
660 who performs services for which licensure or certification is
661 required, a copy of all licenses or certification held by that
662 staff member.

663 (3) The licensee must:

664 (a) Develop and implement infection control policies and
665 procedures and include the policies and procedures in the
666 licensee's policy manual.

667 (b) Maintain liability insurance as defined in s.

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668 624.605(1)(b).

669 (c) Designate one person as an administrator to be
670 responsible and accountable for the overall management of the
671 facility.

672 (d) Designate in writing a person to be responsible for the
673 facility when the administrator is absent from the facility for
674 more than 24 hours.

675 (e) Designate in writing a program director to be
676 responsible for supervising the therapeutic and behavioral
677 staff, determining the levels of supervision, and determining
678 room placement for each client.

679 (f) Designate in writing a person to be responsible when
680 the program director is absent from the facility for more than
681 24 hours.

682 (g) Obtain approval of the comprehensive emergency
683 management plan, pursuant to s. 400.9982(2)(e), from the local
684 emergency management agency. Pending the approval of the plan,
685 the local emergency management agency shall ensure that the
686 following agencies, at a minimum, are given the opportunity to
687 review the plan: the Department of Health, the Agency for Health
688 Care Administration, and the Division of Emergency Management.
689 Appropriate volunteer organizations shall also be given the
690 opportunity to review the plan. The local emergency management
691 agency shall complete its review within 60 days after receipt of
692 the plan and either approve the plan or advise the licensee of
693 necessary revisions.

694 (h) Maintain written records in a form and system that
695 comply with medical and business practices and make the records
696 available by the facility for review or submission to the agency

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697 upon request. The records shall include:

698 1. A daily census record that indicates the number of
699 clients currently receiving services in the facility, including
700 information regarding any public funding of such clients.

701 2. A record of each accident or unusual incident involving
702 a client or staff member that caused, or had the potential to
703 cause, injury or harm to any person or property within the
704 facility. The record shall contain a clear description of each
705 accident or incident; the names of the persons involved; a
706 description of medical or other services provided to these
707 persons, including the provider of the services; and the steps
708 taken to prevent recurrence of such accident or incident.

709 3. A copy of current agreements with third-party providers.

710 4. A copy of current agreements with each consultant
711 employed by the licensee and documentation of a consultant's
712 visits and required written and dated reports.

713 400.9981 Property and personal affairs of clients.—

714 (1) A client shall be given the option of using his or her
715 own belongings, as space permits; choosing a roommate if
716 practical and not clinically contraindicated; and, whenever
717 possible, unless the client is adjudicated incompetent or
718 incapacitated under state law, managing his or her own affairs.

719 (2) The admission of a client to a facility and his or her
720 presence therein does not confer on a licensee or administrator,
721 or an employee or representative thereof, any authority to
722 manage, use, or dispose of the property of the client, and the
723 admission or presence of a client does not confer on such person
724 any authority or responsibility for the personal affairs of the
725 client except that which may be necessary for the safe

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726 management of the facility or for the safety of the client.

727 (3) A licensee or administrator, or an employee or
728 representative thereof, may:

729 (a) Not act as the guardian, trustee, or conservator for a
730 client or a client's property.

731 (b) Act as a competent client's payee for social security,
732 veteran's, or railroad benefits if the client provides consent
733 and the licensee files a surety bond with the agency in an
734 amount equal to twice the average monthly aggregate income or
735 personal funds due to the client, or expendable for the client's
736 account, that are received by a licensee.

737 (c) Act as the attorney in fact for a client if the
738 licensee files a surety bond with the agency in an amount equal
739 to twice the average monthly income of the client, plus the
740 value of a client's property under the control of the attorney
741 in fact.

742
743 The surety bond required under paragraph (b) or paragraph (c)
744 shall be executed by the licensee as principal and a licensed
745 surety company. The bond shall be conditioned upon the faithful
746 compliance of the licensee with the requirements of licensure
747 and is payable to the agency for the benefit of a client who
748 suffers a financial loss as a result of the misuse or
749 misappropriation of funds held pursuant to this subsection. A
750 surety company that cancels or does not renew the bond of a
751 licensee shall notify the agency in writing at least 30 days
752 before the action, giving the reason for cancellation or
753 nonrenewal. A licensee or administrator, or an employee or
754 representative thereof, who is granted power of attorney for a

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755 client of the facility shall, on a monthly basis, notify the
756 client in writing of any transaction made on behalf of the
757 client pursuant to this subsection, and a copy of the
758 notification given to the client shall be retained in the
759 client's file and available for agency inspection.

760 (4) A licensee, with the consent of the client, shall
761 provide for safekeeping in the facility of the client's personal
762 effects of a value not in excess of \$1,000 and the client's
763 funds not in excess of \$500 cash and shall keep complete and
764 accurate records of the funds and personal effects received. If
765 a client is absent from a facility for 24 hours or more, the
766 licensee may provide for safekeeping of the client's personal
767 effects of a value in excess of \$1,000.

768 (5) Funds or other property belonging to or due to a client
769 or expendable for the client's account that are received by a
770 licensee shall be regarded as funds held in trust and shall be
771 kept separate from the funds and property of the licensee and
772 other clients or shall be specifically credited to the client.
773 The funds held in trust shall be used or otherwise expended only
774 for the account of the client. At least once every month, except
775 pursuant to an order of a court of competent jurisdiction, the
776 licensee shall furnish the client and, if applicable, the
777 client's representative with a complete and verified statement
778 of all funds and other property to which this subsection
779 applies, detailing the amount and items received, together with
780 their sources and disposition. The licensee shall furnish the
781 statement annually and upon discharge or transfer of a client. A
782 governmental agency or private charitable agency contributing
783 funds or other property to the account of a client is also

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784 entitled to receive a statement monthly and upon the discharge
785 or transfer of the client.

786 (6) (a) In addition to any damages or civil penalties to
787 which a person is subject, a person who:

788 1. Intentionally withholds a client's personal funds,
789 personal property, or personal needs allowance;

790 2. Demands, beneficially receives, or contracts for payment
791 of all or any part of a client's personal property or personal
792 needs allowance in satisfaction of the facility rate for
793 supplies and services; or

794 3. Borrows from or pledges any personal funds of a client,
795 other than the amount agreed to by written contract under s.
796 429.24,

797
798 commits a misdemeanor of the first degree, punishable as
799 provided in s. 775.082 or s. 775.083.

800 (b) A licensee or administrator, or an employee, or
801 representative thereof, who is granted power of attorney for a
802 client and who misuses or misappropriates funds obtained through
803 this power commits a felony of the third degree, punishable as
804 provided in s. 775.082, s. 775.083, or s. 775.084.

805 (7) In the event of the death of a client, a licensee shall
806 return all refunds, funds, and property held in trust to the
807 client's personal representative, if one has been appointed at
808 the time the licensee disburses such funds, or, if not, to the
809 client's spouse or adult next of kin named in a beneficiary
810 designation form provided by the licensee to the client. If the
811 client does not have a spouse or adult next of kin or such
812 person cannot be located, funds due to be returned to the client

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813 shall be placed in an interest-bearing account, and all property
814 held in trust by the licensee shall be safeguarded until such
815 time as the funds and property are disbursed pursuant to the
816 Florida Probate Code. The funds shall be kept separate from the
817 funds and property of the licensee and other clients of the
818 facility. If the funds of the deceased client are not disbursed
819 pursuant to the Florida Probate Code within 2 years after the
820 client's death, the funds shall be deposited in the Health Care
821 Trust Fund administered by the agency.

822 (8) The agency, by rule, may clarify terms and specify
823 procedures and documentation necessary to administer the
824 provisions of this section relating to the proper management of
825 clients' funds and personal property and the execution of surety
826 bonds.

827 400.9982 Rules establishing standards.-

828 (1) It is the intent of the Legislature that rules adopted
829 and enforced pursuant to this part and part II of chapter 408
830 include criteria to ensure reasonable and consistent quality of
831 care and client safety. The rules should make reasonable efforts
832 to accommodate the needs and preferences of the client to
833 enhance the client's quality of life while residing in a
834 transitional living facility.

835 (2) The agency may adopt and enforce rules to implement
836 this part and part II of chapter 408, which may include
837 reasonable and fair criteria with respect to:

838 (a) The location of transitional living facilities.

839 (b) The qualifications of personnel, including management,
840 medical, nursing, and other professional personnel and nursing
841 assistants and support staff, who are responsible for client

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842 care. The licensee must employ enough qualified professional
843 staff to carry out and monitor interventions in accordance with
844 the stated goals and objectives of each comprehensive treatment
845 plan.

846 (c) Requirements for personnel procedures, reporting
847 procedures, and documentation necessary to implement this part.

848 (d) Services provided to clients of transitional living
849 facilities.

850 (e) The preparation and annual update of a comprehensive
851 emergency management plan in consultation with the Division of
852 Emergency Management. At a minimum, the rules must provide for
853 plan components that address emergency evacuation
854 transportation; adequate sheltering arrangements; postdisaster
855 activities, including provision of emergency power, food, and
856 water; postdisaster transportation; supplies; staffing;
857 emergency equipment; individual identification of clients and
858 transfer of records; communication with families; and responses
859 to family inquiries.

860 400.9983 Violations; penalties.—A violation of this part or
861 any rule adopted pursuant thereto shall be classified according
862 to the nature of the violation and the gravity of its probable
863 effect on facility clients. The agency shall indicate the
864 classification on the written notice of the violation as
865 follows:

866 (1) Class "I" violations are defined in s. 408.813. The
867 agency shall issue a citation regardless of correction and
868 impose an administrative fine of \$5,000 for an isolated
869 violation, \$7,500 for a patterned violation, or \$10,000 for a
870 widespread violation. Violations may be identified, and a fine

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871 must be levied, notwithstanding the correction of the deficiency
872 giving rise to the violation.

873 (2) Class "II" violations are defined in s. 408.813. The
874 agency shall impose an administrative fine of \$1,000 for an
875 isolated violation, \$2,500 for a patterned violation, or \$5,000
876 for a widespread violation. A fine must be levied
877 notwithstanding the correction of the deficiency giving rise to
878 the violation.

879 (3) Class "III" violations are defined in s. 408.813. The
880 agency shall impose an administrative fine of \$500 for an
881 isolated violation, \$750 for a patterned violation, or \$1,000
882 for a widespread violation. If a deficiency giving rise to a
883 class III violation is corrected within the time specified by
884 the agency, the fine may not be imposed.

885 (4) Class "IV" violations are defined in s. 408.813. The
886 agency shall impose for a cited class IV violation an
887 administrative fine of at least \$100 but not exceeding \$200 for
888 each violation. If a deficiency giving rise to a class IV
889 violation is corrected within the time specified by the agency,
890 the fine may not be imposed.

891 400.9984 Receivership proceedings.—The agency may apply s.
892 429.22 with regard to receivership proceedings for transitional
893 living facilities.

894 400.9985 Interagency communication.—The agency, the
895 department, the Agency for Persons with Disabilities, and the
896 Department of Children and Families shall develop electronic
897 systems to ensure that relevant information pertaining to the
898 regulation of transitional living facilities and clients is
899 timely and effectively communicated among agencies in order to

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900 facilitate the protection of clients. Electronic sharing of
901 information shall include, at a minimum, a brain and spinal cord
902 injury registry and a client abuse registry.

903 Section 2. Section 400.805, Florida Statutes, is
904 transferred and renumbered as s. 400.9986, Florida Statutes.

905 Section 3. Effective July 1, 2016, s. 400.9986, Florida
906 Statutes, is repealed.

907 Section 4. The title of part V of chapter 400, Florida
908 Statutes, consisting of sections 400.701 and 400.801, is
909 redesignated as "INTERMEDIATE CARE FACILITIES."

910 Section 5. Subsection (9) of section 381.745, Florida
911 Statutes, is amended to read:

912 381.745 Definitions; ss. 381.739-381.79.—As used in ss.
913 381.739-381.79, the term:

914 (9) "Transitional living facility" means a state-approved
915 facility, ~~as defined and licensed under chapter 400 or chapter~~
916 ~~429, or a facility approved by the brain and spinal cord injury~~
917 ~~program in accordance with this chapter.~~

918 Section 6. Section 381.75, Florida Statutes, is amended to
919 read:

920 381.75 Duties and responsibilities of the department, ~~of~~
921 ~~transitional living facilities, and of residents.~~—Consistent
922 with the mandate of s. 381.7395, the department shall develop
923 and administer a multilevel treatment program for individuals
924 who sustain brain or spinal cord injuries and who are referred
925 to the brain and spinal cord injury program.

926 (1) Within 15 days after any report of an individual who
927 has sustained a brain or spinal cord injury, the department
928 shall notify the individual or the most immediate available

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929 family members of their right to assistance from the state, the
930 services available, and the eligibility requirements.

931 (2) The department shall refer individuals who have brain
932 or spinal cord injuries to other state agencies to ensure ~~assure~~
933 that rehabilitative services, if desired, are obtained by that
934 individual.

935 (3) The department, in consultation with emergency medical
936 service, shall develop standards for an emergency medical
937 evacuation system that will ensure that all individuals who
938 sustain traumatic brain or spinal cord injuries are transported
939 to a department-approved trauma center that meets the standards
940 and criteria established by the emergency medical service and
941 the acute-care standards of the brain and spinal cord injury
942 program.

943 (4) The department shall develop standards for designation
944 of rehabilitation centers to provide rehabilitation services for
945 individuals who have brain or spinal cord injuries.

946 (5) The department shall determine the appropriate number
947 of designated acute-care facilities, inpatient rehabilitation
948 centers, and outpatient rehabilitation centers, needed based on
949 incidence, volume of admissions, and other appropriate criteria.

950 (6) The department shall develop standards for designation
951 of transitional living facilities to provide transitional living
952 services for individuals who participate in the brain and spinal
953 cord injury program ~~the opportunity to adjust to their~~
954 ~~disabilities and to develop physical and functional skills in a~~
955 ~~supported living environment.~~

956 ~~(a) The Agency for Health Care Administration, in~~
957 ~~consultation with the department, shall develop rules for the~~

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958 ~~licensure of transitional living facilities for individuals who~~
959 ~~have brain or spinal cord injuries.~~

960 ~~(b) The goal of a transitional living program for~~
961 ~~individuals who have brain or spinal cord injuries is to assist~~
962 ~~each individual who has such a disability to achieve a higher~~
963 ~~level of independent functioning and to enable that person to~~
964 ~~reenter the community. The program shall be focused on preparing~~
965 ~~participants to return to community living.~~

966 ~~(c) A transitional living facility for an individual who~~
967 ~~has a brain or spinal cord injury shall provide to such~~
968 ~~individual, in a residential setting, a goal-oriented treatment~~
969 ~~program designed to improve the individual's physical,~~
970 ~~cognitive, communicative, behavioral, psychological, and social~~
971 ~~functioning, as well as to provide necessary support and~~
972 ~~supervision. A transitional living facility shall offer at least~~
973 ~~the following therapies: physical, occupational, speech,~~
974 ~~neuropsychology, independent living skills training, behavior~~
975 ~~analysis for programs serving brain-injured individuals, health~~
976 ~~education, and recreation.~~

977 ~~(d) All residents shall use the transitional living~~
978 ~~facility as a temporary measure and not as a permanent home or~~
979 ~~domicile. The transitional living facility shall develop an~~
980 ~~initial treatment plan for each resident within 3 days after the~~
981 ~~resident's admission. The transitional living facility shall~~
982 ~~develop a comprehensive plan of treatment and a discharge plan~~
983 ~~for each resident as soon as practical, but no later than 30~~
984 ~~days after the resident's admission. Each comprehensive~~
985 ~~treatment plan and discharge plan must be reviewed and updated~~
986 ~~as necessary, but no less often than quarterly. This subsection~~

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987 ~~does not require the discharge of an individual who continues to~~
988 ~~require any of the specialized services described in paragraph~~
989 ~~(c) or who is making measurable progress in accordance with that~~
990 ~~individual's comprehensive treatment plan. The transitional~~
991 ~~living facility shall discharge any individual who has an~~
992 ~~appropriate discharge site and who has achieved the goals of his~~
993 ~~or her discharge plan or who is no longer making progress toward~~
994 ~~the goals established in the comprehensive treatment plan and~~
995 ~~the discharge plan. The discharge location must be the least~~
996 ~~restrictive environment in which an individual's health, well-~~
997 ~~being, and safety is preserved.~~

998 ~~(7) Recipients of services, under this section, from any of~~
999 ~~the facilities referred to in this section shall pay a fee based~~
1000 ~~on ability to pay.~~

1001 Section 7. Subsection (4) of section 381.78, Florida
1002 Statutes, is amended to read:

1003 381.78 Advisory council on brain and spinal cord injuries.-

1004 (4) The council shall:

1005 ~~(a)~~ provide advice and expertise to the department in the
1006 preparation, implementation, and periodic review of the brain
1007 and spinal cord injury program.

1008 ~~(b) Annually appoint a five-member committee composed of~~
1009 ~~one individual who has a brain injury or has a family member~~
1010 ~~with a brain injury, one individual who has a spinal cord injury~~
1011 ~~or has a family member with a spinal cord injury, and three~~
1012 ~~members who shall be chosen from among these representative~~
1013 ~~groups: physicians, other allied health professionals,~~
1014 ~~administrators of brain and spinal cord injury programs, and~~
1015 ~~representatives from support groups with expertise in areas~~

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1016 ~~related to the rehabilitation of individuals who have brain or~~
1017 ~~spinal cord injuries, except that one and only one member of the~~
1018 ~~committee shall be an administrator of a transitional living~~
1019 ~~facility. Membership on the council is not a prerequisite for~~
1020 ~~membership on this committee.~~

1021 ~~1. The committee shall perform onsite visits to those~~
1022 ~~transitional living facilities identified by the Agency for~~
1023 ~~Health Care Administration as being in possible violation of the~~
1024 ~~statutes and rules regulating such facilities. The committee~~
1025 ~~members have the same rights of entry and inspection granted~~
1026 ~~under s. 400.805(4) to designated representatives of the agency.~~

1027 ~~2. Factual findings of the committee resulting from an~~
1028 ~~onsite investigation of a facility pursuant to subparagraph 1.~~
1029 ~~shall be adopted by the agency in developing its administrative~~
1030 ~~response regarding enforcement of statutes and rules regulating~~
1031 ~~the operation of the facility.~~

1032 ~~3. Onsite investigations by the committee shall be funded~~
1033 ~~by the Health Care Trust Fund.~~

1034 ~~4. Travel expenses for committee members shall be~~
1035 ~~reimbursed in accordance with s. 112.061.~~

1036 ~~5. Members of the committee shall recuse themselves from~~
1037 ~~participating in any investigation that would create a conflict~~
1038 ~~of interest under state law, and the council shall replace the~~
1039 ~~member, either temporarily or permanently.~~

1040 Section 8. Subsection (5) of section 400.93, Florida
1041 Statutes, is amended to read:

1042 400.93 Licensure required; exemptions; unlawful acts;
1043 penalties.—

1044 (5) The following are exempt from home medical equipment

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1045 provider licensure, unless they have a separate company,
1046 corporation, or division that is in the business of providing
1047 home medical equipment and services for sale or rent to
1048 consumers at their regular or temporary place of residence
1049 pursuant to the provisions of this part:

1050 (a) Providers operated by the Department of Health or
1051 Federal Government.

1052 (b) Nursing homes licensed under part II.

1053 (c) Assisted living facilities licensed under chapter 429,
1054 when serving their residents.

1055 (d) Home health agencies licensed under part III.

1056 (e) Hospices licensed under part IV.

1057 (f) Intermediate care facilities and homes for special
1058 services, ~~and transitional living facilities~~ licensed under part
1059 V.

1060 (g) Transitional living facilities licensed under part XI.

1061 (h) ~~(g)~~ Hospitals and ambulatory surgical centers licensed
1062 under chapter 395.

1063 (i) ~~(h)~~ Manufacturers and wholesale distributors when not
1064 selling directly to consumers.

1065 (j) ~~(i)~~ Licensed health care practitioners who use ~~utilize~~
1066 home medical equipment in the course of their practice, but do
1067 not sell or rent home medical equipment to their patients.

1068 (k) ~~(j)~~ Pharmacies licensed under chapter 465.

1069 Section 9. Subsection (21) of section 408.802, Florida
1070 Statutes, is amended to read:

1071 408.802 Applicability.—The provisions of this part apply to
1072 the provision of services that require licensure as defined in
1073 this part and to the following entities licensed, registered, or

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1074 certified by the agency, as described in chapters 112, 383, 390,
1075 394, 395, 400, 429, 440, 483, and 765:

1076 (21) Transitional living facilities, as provided under part
1077 XI ~~∅~~ of chapter 400.

1078 Section 10. Subsection (20) of section 408.820, Florida
1079 Statutes, is amended to read:

1080 408.820 Exemptions.—Except as prescribed in authorizing
1081 statutes, the following exemptions shall apply to specified
1082 requirements of this part:

1083 (20) Transitional living facilities, as provided under part
1084 XI ~~∅~~ of chapter 400, are exempt from s. 408.810(10).

1085 Section 11. For the purpose of incorporating the amendment
1086 made by this act to section 381.75, Florida Statutes, in a
1087 reference thereto, subsection (1) of section 381.79, Florida
1088 Statutes, is reenacted to read:

1089 381.79 Brain and Spinal Cord Injury Program Trust Fund.—

1090 (1) There is created in the State Treasury the Brain and
1091 Spinal Cord Injury Program Trust Fund. Moneys in the fund shall
1092 be appropriated to the department for the purpose of providing
1093 the cost of care for brain or spinal cord injuries as a payor of
1094 last resort to residents of this state, for multilevel programs
1095 of care established pursuant to s. 381.75.

1096 (a) Authorization of expenditures for brain or spinal cord
1097 injury care shall be made only by the department.

1098 (b) Authorized expenditures include acute care,
1099 rehabilitation, transitional living, equipment and supplies
1100 necessary for activities of daily living, public information,
1101 prevention, education, and research. In addition, the department
1102 may provide matching funds for public or private assistance

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1103 provided under the brain and spinal cord injury program and may
1104 provide funds for any approved expansion of services for
1105 treating individuals who have sustained a brain or spinal cord
1106 injury.

1107 Section 12. (1) A transitional living facility that is
1108 licensed under s. 400.805, Florida Statutes, on June 30, 2015,
1109 must be licensed under and in compliance with s. 400.9986,
1110 Florida Statutes, until the licensee becomes licensed under and
1111 in compliance with part XI of ch. 400, Florida Statutes, as
1112 created by this act. Such licensees must be licensed under and
1113 in compliance with part XI of chapter 400, Florida Statutes, as
1114 created by this act, on or before July 1, 2016.

1115 (2) A transitional living facility that is licensed on or
1116 after July 1, 2015, must be licensed under and in compliance
1117 with part XI of ch. 400, Florida Statutes, as created by this
1118 act.

1119 Section 13. Except as otherwise expressly provided in this
1120 act, this act shall take effect July 1, 2015.

ENROLLED

CS/HB 71

2015 Legislature

1
 2 An act relating to service animals; amending s.
 3 413.08, F.S.; providing and revising definitions;
 4 requiring a public accommodation to permit use of a
 5 service animal by an individual with a disability
 6 under certain circumstances; providing conditions for
 7 a public accommodation to exclude or remove a service
 8 animal; revising penalties for certain persons or
 9 entities who interfere with use of a service animal in
 10 specified circumstances; providing a penalty for
 11 knowing and willful misrepresentation with respect to
 12 use or training of a service animal; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 413.08, Florida Statutes, is amended to
 18 read:

19 413.08 Rights and responsibilities of an individual with a
 20 disability; use of a service animal; prohibited discrimination
 21 in public employment, public accommodations, and ~~or~~ housing
 22 accommodations; penalties.-

23 (1) As used in this section and s. 413.081, the term:

24 (a) "Housing accommodation" means any real property or
 25 portion thereof which is used or occupied, or intended,
 26 arranged, or designed to be used or occupied, as the home,

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27 residence, or sleeping place of one or more persons, but does
 28 not include any single-family residence, the occupants of which
 29 rent, lease, or furnish for compensation not more than one room
 30 therein.

31 (b) "Individual with a disability" means a person who has
 32 a physical or mental impairment that substantially limits one or
 33 more major life activities of the individual ~~is deaf, hard of~~
 34 ~~hearing, blind, visually impaired, or otherwise physically~~
 35 ~~disabled~~. As used in this paragraph, the term:

36 1. "Major life activity" means a function such as caring
 37 for one's self, performing manual tasks, walking, seeing,
 38 hearing, speaking, breathing, learning, and working ~~"Hard of~~
 39 ~~hearing" means an individual who has suffered a permanent~~
 40 ~~hearing impairment that is severe enough to necessitate the use~~
 41 ~~of amplification devices to discriminate speech sounds in verbal~~
 42 ~~communication.~~

43 2. "Physical or mental impairment" means:

44 a. A physiological disorder or condition, disfigurement,
 45 or anatomical loss that affects one or more bodily functions; or

46 b. A mental or psychological disorder that meets one of
 47 the diagnostic categories specified in the most recent edition
 48 of the Diagnostic and Statistical Manual of Mental Disorders
 49 published by the American Psychiatric Association, such as an
 50 intellectual or developmental disability, organic brain
 51 syndrome, traumatic brain injury, posttraumatic stress disorder,
 52 or an emotional or mental illness ~~"Physically disabled" means~~

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53 ~~any person who has a physical impairment that substantially~~
 54 ~~limits one or more major life activities.~~

55 (c) "Public accommodation" means a common carrier,
 56 airplane, motor vehicle, railroad train, motor bus, streetcar,
 57 boat, or other public conveyance or mode of transportation;
 58 hotel; a timeshare that is a transient public lodging
 59 establishment as defined in s. 509.013; lodging place; place of
 60 public accommodation, amusement, or resort; and other places to
 61 which the general public is invited, subject only to the
 62 conditions and limitations established by law and applicable
 63 alike to all persons. The term does not include air carriers
 64 covered by the Air Carrier Access Act of 1986, 49 U.S.C. s.
 65 41705, and by regulations adopted by the United States
 66 Department of Transportation to implement such act.

67 (d) "Service animal" means an animal that is trained to do
 68 work or perform tasks for an individual with a disability,
 69 including a physical, sensory, psychiatric, intellectual, or
 70 other mental disability. The work done or tasks performed must
 71 be directly related to the individual's disability and may
 72 include, but are not limited to, guiding an individual ~~a person~~
 73 who is visually impaired or blind, alerting an individual ~~a~~
 74 ~~person~~ who is deaf or hard of hearing, pulling a wheelchair,
 75 assisting with mobility or balance, alerting and protecting an
 76 individual ~~a person~~ who is having a seizure, retrieving objects,
 77 alerting an individual to the presence of allergens, providing
 78 physical support and assistance with balance and stability to an

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79 individual with a mobility disability, helping an individual
80 with a psychiatric or neurological disability by preventing or
81 interrupting impulsive or destructive behaviors, reminding an
82 individual with mental illness to take prescribed medications,
83 calming an individual with posttraumatic stress disorder during
84 an anxiety attack, or doing other specific work or performing
85 other special tasks. A service animal is not a pet. For purposes
86 of subsections (2), (3), and (4), the term "service animal" is
87 limited to a dog or miniature horse. The crime-deterrent effect
88 of an animal's presence and the provision of emotional support,
89 well-being, comfort, or companionship do not constitute work or
90 tasks for purposes of this definition.

91 (2) An individual with a disability is entitled to full
92 and equal accommodations, advantages, facilities, and privileges
93 in all public accommodations. A public accommodation must modify
94 its policies, practices, and procedures to permit use of a
95 service animal by an individual with a disability. This section
96 does not require any person, firm, business, or corporation, or
97 any agent thereof, to modify or provide any vehicle, premises,
98 facility, or service to a higher degree of accommodation than is
99 required for a person not so disabled.

100 (3) An individual with a disability has the right to be
101 accompanied by a service animal in all areas of a public
102 accommodation that the public or customers are normally
103 permitted to occupy.

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104 (a) The service animal must be under the control of its
105 handler and must have a harness, leash, or other tether, unless
106 either the handler is unable because of a disability to use a
107 harness, leash, or other tether, or the use of a harness, leash,
108 or other tether would interfere with the service animal's safe,
109 effective performance of work or tasks, in which case the
110 service animal must be otherwise under the handler's control by
111 means of voice control, signals, or other effective means.

112 (b)~~(a)~~ Documentation that the service animal is trained is
113 not a precondition for providing service to an individual
114 accompanied by a service animal. A public accommodation may not
115 ask about the nature or extent of an individual's disability. To
116 determine the difference between a service animal and a pet, a
117 public accommodation may ask if an animal is a service animal
118 required because of a disability and what work or what tasks the
119 animal has been trained to perform ~~in order to determine the~~
120 ~~difference between a service animal and a pet.~~

121 (c)~~(b)~~ A public accommodation may not impose a deposit or
122 surcharge on an individual with a disability as a precondition
123 to permitting a service animal to accompany the individual with
124 a disability, even if a deposit is routinely required for pets.

125 (d)~~(e)~~ An individual with a disability is liable for
126 damage caused by a service animal if it is the regular policy
127 and practice of the public accommodation to charge nondisabled
128 persons for damages caused by their pets.

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129 (e)~~(d)~~ The care or supervision of a service animal is the
130 responsibility of the individual owner. A public accommodation
131 is not required to provide care or food or a special location
132 for the service animal or assistance with removing animal
133 excrement.

134 (f)~~(e)~~ A public accommodation may exclude or remove any
135 animal from the premises, including a service animal, if the
136 animal is out of control and the animal's handler does not take
137 effective action to control it, the animal is not housebroken,
138 or the animal's behavior poses a direct threat to the health and
139 safety of others. Allergies and fear of animals are not valid
140 reasons for denying access or refusing service to an individual
141 with a service animal. If a service animal is excluded or
142 removed for being a direct threat to others, the public
143 accommodation must provide the individual with a disability the
144 option of continuing access to the public accommodation without
145 having the service animal on the premises.

146 (4) Any person, firm, or corporation, or the agent of any
147 person, firm, or corporation, who denies or interferes with
148 admittance to, or enjoyment of, a public accommodation or, with
149 regard to a public accommodation, otherwise interferes with the
150 rights of an individual with a disability or the trainer of a
151 service animal while engaged in the training of such an animal
152 pursuant to subsection (8), commits a misdemeanor of the second
153 degree, punishable as provided in s. 775.082 or s. 775.083 and
154 must perform 30 hours of community service for an organization

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155 that serves individuals with disabilities, or for another entity
156 or organization at the discretion of the court, to be completed
157 in not more than 6 months.

158 (5) It is the policy of this state that an individual with
159 a disability be employed in the service of the state or
160 political subdivisions of the state, in the public schools, and
161 in all other employment supported in whole or in part by public
162 funds, and an employer may not refuse employment to such a
163 person on the basis of the disability alone, unless it is shown
164 that the particular disability prevents the satisfactory
165 performance of the work involved.

166 (6) An individual with a disability is entitled to rent,
167 lease, or purchase, as other members of the general public, any
168 housing accommodations offered for rent, lease, or other
169 compensation in this state, subject to the conditions and
170 limitations established by law and applicable alike to all
171 persons.

172 (a) This section does not require any person renting,
173 leasing, or otherwise providing real property for compensation
174 to modify her or his property in any way or provide a higher
175 degree of care for an individual with a disability than for a
176 person who is not disabled.

177 (b) An individual with a disability who has a service
178 animal or who obtains a service animal is entitled to full and
179 equal access to all housing accommodations provided for in this
180 section, and such a person may not be required to pay extra

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181 compensation for such ~~the~~ service animal. However, such a person
 182 is liable for any damage done to the premises or to another
 183 person on the premises by the ~~such an~~ animal. A housing
 184 accommodation may request proof of compliance with vaccination
 185 requirements.

186 (c) This subsection does not limit the rights or remedies
 187 of a housing accommodation or an individual with a disability
 188 that are granted by federal law or another law of this state
 189 with regard to other assistance animals.

190 (7) An employer covered under subsection (5) who
 191 discriminates against an individual with a disability in
 192 employment, unless it is shown that the particular disability
 193 prevents the satisfactory performance of the work involved, or
 194 any person, firm, or corporation, or the agent of any person,
 195 firm, or corporation, providing housing accommodations as
 196 provided in subsection (6) who discriminates against an
 197 individual with a disability, commits a misdemeanor of the
 198 second degree, punishable as provided in s. 775.082 or s.
 199 775.083.

200 (8) Any trainer of a service animal, while engaged in the
 201 training of such an animal, has the same rights and privileges
 202 with respect to access to public facilities and the same
 203 liability for damage as is provided for those persons described
 204 in subsection (3) accompanied by service animals.

205 (9) A person who knowingly and willfully misrepresents
 206 herself or himself, through conduct or verbal or written notice,

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207 as using a service animal and being qualified to use a service
208 animal or as a trainer of a service animal commits a misdemeanor
209 of the second degree, punishable as provided in s. 775.082 or s.
210 775.083 and must perform 30 hours of community service for an
211 organization that serves individuals with disabilities, or for
212 another entity or organization at the discretion of the court,
213 to be completed in not more than 6 months.

214 Section 2. This act shall take effect July 1, 2015.