SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2156

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Klein

SUBJECT: Health Care

DATE: April 10, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Wilson	HC	Favorable/CS
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 2156 amends continuing education requirements for licensed dentists and dental hygienists, to provide an option of completing a course approved by the Board of Dentistry in lieu of a domestic violence course for licensure renewal, if the licensed dentist or dental hygienist has completed a domestic violence course in the immediately preceding two years. The bill further amends the continuing education requirements for licensed dentists and dental hygienists, to provide an option of completing a course approved by the Board of Dentistry in lieu of an AIDS/HIV course for licensure renewal, if the licensed dentist or dental hygienist has completed an AIDS/HIV course in the immediately preceding two years.

Committee Substitute for Senate Bill 2156 amends the definition of the term "end-stage condition" in s. 765.101, F.S., to be a condition that has resulted in progressively severe and permanent deterioration where the decisionmaker would consider life-prolonging treatment to be more of a burden than a benefit. The bill defines the term "palliative care" in s. 765.102, F.S., to be the comprehensive management of the physical, psychological, social, spiritual and existential needs of the patient, particularly those patients with an incurable, progressive illness.

The bill amends the statutory responsibilities of health care surrogates and proxies in ss. 765.205 and 765.401, F.S., by providing that absent patient intent, a best-interest standard may be used by the surrogate or proxy in withholding or withdrawing care.

This bill substantially amends sections 456.031, 456.033, 765.101, 765.102, 765.205, and 765.401 of the Florida Statutes.

II. Present Situation:

Dentistry and Dental Hygiene Continuing Education

Chapter 466, Florida Statutes, governs the practice of dentistry and dental hygiene. The Board of Dentistry has adopted administrative rules specifying continuing education requirements for dentists and dental hygienists.[1] Dentists must complete 30 hours of continuing professional education for license renewal every two years. Of the required 30 hours of continuing education, one hour must be in domestic violence training and two hours in ethics and jurisprudence. Dental hygienists must complete 24 hours of continuing professional education during each license renewal every two years. In addition to the 24 hours, dental hygienists must complete a one-hour course on domestic violence. Dentists and dental hygienists must complete a course in cardiopulmonary resuscitation in addition to the required continuing education hours for their relicensure.

Domestic Violence Continuing Education

Section 456.031, F.S., provides continuing education requirements on domestic violence for health care professionals licensed or certified under chapter 458, F.S. (medical practice), chapter 459, F.S. (osteopathic medicine), chapter 464, F.S. (nursing), chapter 466, F.S. (dentistry and dental hygiene), chapter 467, F.S. (midwifery), chapter 490, F.S. (psychological services), and chapter 491, F.S. (psychology, clinical social work, marriage and family therapy and mental health counseling). The appropriate board must require professionals under its jurisdiction to complete a one-hour continuing education course approved by the board on domestic violence as a part of the professional's relicensure or recertification every two years. The course must consist of information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetuator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

Each licensee or certificate holder must submit confirmation of having completed such course, on a form provided by the board when submitting fees for each renewal. A professional is subject to discipline for failure to comply with the requirements to complete the required domestic violence course. As a condition of obtaining a license, applicants for initial licensure must complete a course on domestic violence or its equivalent or show good cause for not completing the requirement and then be allowed six months to do so. The board may approve additional equivalent courses that may be used to satisfy the domestic violence course requirements. Any person holding two or more licenses must be permitted to show proof of having taken one board-approved course on domestic violence.

The domestic violence continuing education requirement in s. 456.031, F.S., was amended in 2000[2] to provide a health care professional the option of completing an end-of-life care and palliative health care course in lieu of a domestic violence course for licensure and licensure

[1] Rule 64B5-12.013, F.A.C.
[2] Chapter 2000-295, s. 6, L.O.F.

renewal, if the health care professional has completed a domestic violence course in the immediately preceding two years.

AIDS/HIV Continuing Education

Section 456.033, F.S., provides continuing education requirements on human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) for health care professionals licensed or certified under chapter 457, F.S. (acupuncture), chapter 458, F.S. (medical practice), chapter 459, F.S. (osteopathic medicine), chapter 464, F.S. (nursing), chapter 465, F.S., (pharmacy), chapter 466, F.S. (dentistry and dental hygiene), parts II, III, V, and X of chapter 468, F.S. (nursing home administration, occupational therapy, respiratory therapy, and dietetics and nutrition practice), and chapter 486, F.S. (physical therapy). The appropriate board must require professionals under its jurisdiction to complete a one-hour continuing education course approved by the board on AIDS/HIV as a part of the professional's relicensure or recertification every two years. The course must consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of AIDS/ HIV. Such course must include information on current Florida law on AIDS and its impact on testing, confidentiality of testing results, treatment of patients, and any protocols and procedures applicable to HIV counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification.

Each licensee or certificate holder must submit confirmation of having completed such course, on a form provided by the board when submitting fees for each renewal. A professional is subject to discipline for failure to comply with the requirements to complete the required AIDS/HIV course. As a condition of obtaining a license, applicants for initial licensure must complete a course on AIDS/HIV or show good cause for not completing the requirement and then be allowed 6 months to do so. The board may approve additional equivalent courses that may be used to satisfy the AIDS/HIV course requirements. Any person holding two or more licenses must be permitted to show proof of having taken one board-approved course on AIDS/HIV.

The AIDS/HIV continuing education requirement in s. 456.033, F.S., was amended in 1999[3] to provide a health care professional the option of completing an end-of-life care and palliative health care course in lieu of an AIDS/HIV course for licensure and licensure renewal, if the health care professional has completed an AIDS/HIV course in the immediately preceding two years.

End-of-Life Care and Advance Directives

Federal and state statutes and case law provide that a legally competent adult has the right to make decisions about the amount, duration and type of medical treatment he or she wishes to receive, including the right to refuse or to discontinue medical treatment.[4] However, the Florida

[3] Chapter 99-331, s. 9. L.O.F.

[4] *See, e.g., Satz v. Perlmutter*, 379 So.2d 359 (Fla. 1980) (the right of a competent, but terminally ill person, to refuse medical treatment); *John F. Kennedy Memorial Hosp., Inc. v. Bludworth*, 452 So.2d 921 (Fla. 1984) (the right of an incapacitated and incompetent terminally ill person to refuse medical treatment); *Wons v. Public Health Trust of Dade County*, 541 So.2d 96

Supreme Court has recognized four state interests that may override, on a case-by-case basis, a person's unlimited right to make health care decisions: the preservation of life, the protection of innocent third parties, the prevention of suicide, and maintenance of the ethical integrity of the medical profession.[5]

The concept of "substituted judgment" provides for a person to act on behalf of another person who lacks capacity to make their own health care decisions, particularly regarding consent to withhold or withdraw extraordinary life-sustaining measures on the belief that the terminally ill and incapacitated patient, while competent, would have wanted or done the same under the circumstances.[6]

Under chapter 765, F.S., a mentally capacitated person can plan and make health care arrangements for a future point when they may become incapacitated, through written instruments termed health care advance directives. The instruments may be written or oral expressions regarding any aspect of the principal's health care, including: designation of a health care surrogate, delegation of a durable power of attorney, execution of a living will, execution of a do-not-resuscitate order (DNR), or execution of some other like instrument under another state's law.

Health Care Surrogate and Proxy

Florida law provides for the designation of a health care surrogate to make health care decisions for a principal under ss. 765.202 and 765.203, F.S. A written designation of a health care surrogate must be witnessed by two adults and signed by the principal or alternatively, another person to sign on the principal's behalf if the principal is unable sign the instrument under s. 765.202, F.S. A suggested form is provided in statute under s. 765.203, F.S.

In the absence of an advance directive or a designated health care surrogate or the unavailability of a health care surrogate, a proxy may be appointed from a list of specified persons who know the patient or a court may appoint a guardian to make health care decisions under s. 765.401, F.S. A proxy must comply with the same provisions that a health care surrogate must. However, the proxy's decision to withhold or withdraw life-prolonging procedures must be supported by a written declaration evidencing the patient's desire for such an action. In the absence of a written declaration, the patient must have a terminal condition, have an end-stage condition, or be in a persistent vegetative state. When authorizing the withholding or withdrawing of life-prolong procedures, a proxy's decision must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent.

Families and others may intervene in a decision by a surrogate, proxy or health care professional through an expedited judicial intervening process to "swiftly resolve claims when nonlegal means prove unsuccessful" under s. 765.105, F.S. *See* Fla. Prob. R. 5.900.

(Fla. 1989) (the right of a competent but not terminally ill person to refuse medical treatment); *In re Guardianship of Browning*, 568 So.2d 4 (Fla. 1990) (the right of an incapacitated, but not terminally ill, person to refuse medical treatment).

[5] *In re Guardianship of Browning*, *supra*.

[6] *John F. Kennedy Memorial Hosp., Inc. v. Bludworth*, *supra*.

Durable Powers of Attorney

In Florida, powers of attorney and similar instruments conferring legal authority are governed by chapter 709, F.S. The power of attorney must be in writing and executed in accordance with the statutory formality associated with conveyance of real property. Florida recognizes fully the general power of attorney and the durable power of attorney.

The powers delegable under a power of attorney can include, but are not limited to, unless otherwise provided in law: every act authorized and specifically enumerated in the durable power of attorney; authority to execute stock, security and other related powers; and authority to convey or mortgage property. (*See* s. 709.08(7)(a), F.S.) Additionally, the durable power of attorney may include the power to make health care decisions, if such authority is specifically granted in the durable power of attorney, including those set forth in chapter 765, F.S., relating to health care advance directives under s. 709.08(7)(c)3., F.S.

Living Wills

Part III of chapter 765, F.S., governs the execution of a living will regarding the withholding or withdrawing of life-prolonging procedures in the event a person has a terminal condition, has an end-stage condition or is in a persistent vegetative state. The living will serves as persuasive evidence of the subsequently incapacitated person's intent and is given great weight by the surrogate or proxy since it provides a presumption of clear and convincing evidence of the patient's wishes. Additional conditions that must be met by the surrogate exercising an incompetent person's right to forgo treatment include: a determination that the patient does not have a reasonable probability of recovering capacity so that the right can be directly exercised by the incompetent person, and any limitations or conditions expressed orally or in the living will.

Some health care professionals view and have acted on living wills as self-executing documents upon which an attending physician may carry out the patient's instructions without having to consult with the patient's family, guardians, or close friends. If a health care provider is unwilling to carry out the patient's living-will instructions regarding treatment, including the withdrawal or withholding of life-prolonging procedures, the health care provider may transfer the patient to another health care provider. (*See* s. 765.308, F.S.)

Do-Not-Resuscitate Orders

In 1992, the Legislature provided statutory recognition of DNR orders by emergency medical services personnel to honor the wishes of those who elect to die at home, or in another non-clinical setting, without being subjected to extraordinary resuscitation measures in the event of an emergency call. Emergency medical technicians and paramedics are immune from liability when acting on a physician's DNR order under s. 401.45(3), F.S. In the absence of a DNR order, emergency services personnel are under a duty to administer cardiopulmonary resuscitation as needed.

The Department of Health is responsible for the establishment of rules relating to the circumstances and procedures for honoring DNR orders under s. 401.35(4), F.S. Pursuant to

department rule, DNR orders must be executed and properly witnessed on a standardized form.[7] The form must also include the signatures of the person's attending physician who must attest to consultation with another physician as to the person's terminal condition, and of the patient or the patient's surrogate, proxy or guardian. The department, in consultation with the Department of Elderly Affairs and the Agency for Health Care Administration, has developed a standardized do-not-resuscitate identification system with devices to signify that the possessor is a patient for whom a physician has issued a DNR order under s. 401.45(c), F.S.

Court-Appointed Guardians

In any guardianship proceeding, the court is required to determine if a health care advance directive has been executed and whether a health care surrogate has been designated under s. 744.3115, F.S. If a health care advance directive has been executed and a health care surrogate designated, the court can modify or revoke the health care surrogate's authority as provided under the directive to the extent governed by chapter 765, F.S., by redelegating the authority to a guardian. If no directive was executed and no surrogate designated, the court can delegate to a guardian the power to "consent to medical and mental health treatment" on behalf of the incapacitated person under s. 744.3215(3)(f), F.S.

In the absence of a health care advance directive or designated health care surrogate, a judicially appointed guardian may, as a proxy, make health care decisions including the decision to withdraw or withhold life-prolonging procedures under ss. 765.401 and 765.404, F.S. However, if the health care decision to be made is the decision to withdraw or withhold life-prolonging procedures, such proxy's decision must be based on either:

- A written declaration, or
- Clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent (the patient must have a terminal condition, have an end-stage condition or be in a persistent vegetative state, for this provision to apply).

In addition, a court-appointed guardian with express authority to consent to medical treatment may exercise the decision to withhold or withdraw life-prolonging procedures if the person is in a persistent vegetative state, there is no advance health care directive or family or friend is available to act as proxy, and there is no evidence indicating what the person would have wanted under such conditions. (*See* s. 765.404, F.S.) The guardian and the person's attending physician must consult with the medical ethics committee of the applicable health care facility and conclude that the condition is permanent, that there is no reasonable medical probability for recovery and that withholding or withdrawing care is in the patient's best interest.

III. Effect of Proposed Changes:

Section 1. Amends the continuing education requirements for licensed dentists and dental hygienists in s. 456.031, F.S., to provide an option of completing a course approved by the Board of Dentistry in lieu of a domestic violence course for licensure renewal, if the licensed dentist or

[7] "Prehospital Do Not Resuscitate Order Form, DH 1896" under rule 64E-2.031, F.A.C.

dental hygienist has completed a domestic violence course in the immediately preceding two years.

Section 2. Amends the continuing education requirements for licensed dentists or dental hygienists in s. 456.033, F.S., to provide an option of completing a course approved by the Board of Dentistry in lieu of an AIDS/HIV course for licensure renewal, if the licensed dentist or dental hygienist has completed an AIDS/HIV course in the immediately preceding two years.

Section 3. Amends the definition of the term "end-stage condition" in s. 765.101, F.S., to be a condition that has resulted in progressively severe and permanent deterioration, for which the patient or resident, or his or her authorized representative, would consider life-prolonging treatment to be more of a burden than a benefit.

Section 4. Defines the term "palliative care" in s. 765.102, F.S., as the comprehensive management of the physical, psychological, social, spiritual and existential needs of patients, especially suited to the care of people who have incurable, progressive illness.

Palliative care must include: an opportunity to discuss and plan for end-of-life care; assurance that physical and mental suffering will be carefully attended; assurance that preferences for withholding and withdrawing life-sustaining interventions will be honored; assurance that the personal goals of the dying person will be addressed; assurance that the dignity of the dying person will be a priority; assurance that healthcare providers will not abandon the dying person; assurance that the burden to family and others will be addressed; assurance that advance directives for care will be respected; assurance that organizational mechanisms will evaluate the availability and quality of end-of-life, palliative and hospice care, including the evaluation of administrative and regulatory barriers; assurance that necessary healthcare services will be provided and reimbursement policies are available; and assurance that patient goals will be accomplished in a culturally appropriate manner.

Section 5. Amends the statutory responsibilities of health care surrogates in s. 765.205, F.S., by providing that if there is no indication of the principal's preferences, the substitute decision maker may use a best-interest standard in determining what treatments are to be withheld or withdrawn.

Section 6. Amends the statutory responsibilities of a proxy in s. 765.401, F.S., by providing that if there is no indication of the principal's preferences, the proxy may use a best-interest standard in determining what treatments are to be withheld or withdrawn.

Section 7. The bill, should it become law, will be effective July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.