

1 A bill to be entitled
2 An act relating to mental health and substance abuse;
3 amending s. 394.4598, F.S.; authorizing a family
4 member of a patient or an interested party to petition
5 a court for the appointment of a guardian advocate;
6 requiring a court to give preference to certain
7 specified surrogates if such surrogate has already
8 been designated by the patient; creating s. 397.803,
9 F.S.; establishing the Substance Abuse Assistance
10 Pilot Program within the Department of Children and
11 Families; requiring the department to determine a
12 target number of participants within available funds;
13 providing the purpose of the pilot program; requiring
14 the program to develop safe and cost efficient
15 treatment alternatives and provide comprehensive case
16 management services for eligible substance abuse
17 impaired adults; authorizing participation in the
18 program as an alternative to criminal imprisonment;
19 requiring that each pilot program submit specified
20 data to the department on a monthly basis; providing
21 eligibility criteria; requiring that maximum
22 enrollment be determined on the basis of available
23 funding; requiring the department to contract with
24 specified entities to serve as program managers;
25 specifying the functions of the program manager;
26 requiring the department to establish certain criteria

27 and qualifications for the project manager; requiring
28 a pilot program site to only have one network in the
29 region; providing requirements for provider networks;
30 specifying services that must be provided by a
31 provider network; specifying that the primary payor
32 for services provided through the program is the
33 participant's private pay or Medicaid insurance
34 coverage; allowing eligible participants to share in
35 the cost of provided services based on ability to pay;
36 requiring the department to provide an annual report
37 to the Governor and Legislature evaluating the impact
38 of the program; requiring such report to include
39 specified information; transferring and renumbering s.
40 765.401, F.S.; transferring and renumbering s.
41 765.404, F.S.; providing a directive to the Division
42 of Law Revision and Information; creating s. 765.4015,
43 F.S.; providing a short title; creating s. 765.402,
44 F.S.; providing legislative findings; creating s.
45 765.403, F.S.; defining terms; creating s. 765.405,
46 F.S.; authorizing an adult with capacity to execute a
47 mental health or substance abuse treatment advance
48 directive; providing a presumption of validity if
49 certain requirements are met; providing for execution
50 of the mental health or substance abuse treatment
51 advanced directive; creating s. 765.406, F.S.;

52 establishing requirements for a valid mental health or

53 substance abuse treatment advance directive; providing
54 that a mental health or substance abuse treatment
55 directive is valid upon execution even if a part of
56 the mental health or substance abuse treatment
57 directive takes effect at a later date; allowing a
58 mental health or substance abuse treatment directive
59 to be revoked, in whole or in part, or to expire under
60 its own terms; specifying that a mental health or
61 substance abuse treatment advance directive does not
62 or may not serve specified purposes; creating s.
63 765.407, F.S.; providing circumstances under which a
64 mental health or substance abuse treatment advance
65 directive may be revoked; providing circumstances
66 under which a principal may waive specific directive
67 provisions without revoking the directive; creating s.
68 765.408, F.S.; providing legislative findings and
69 legislative intent for self-binding arrangements;
70 providing requirements for creating such arrangements;
71 creating s. 765.409, F.S.; specifying the conditions
72 under which a principal may be admitted for inpatient
73 mental health or substance abuse treatment; providing
74 that creation of an irrevocable directive of consent
75 to inpatient treatment creates a rebuttable
76 presumption of incapacity; authorizing a principal to
77 be admitted to, or remain in, inpatient treatment for
78 up to 14 days; requiring express consent in a

79 directive for the administration of psychotropic
80 medication; requiring conditions for administering
81 such medication; prohibiting a principal from
82 authorizing psychosurgery or electroconvulsive therapy
83 in a directive; authorizing a principal to seek
84 specified injunctive relief; creating s. 765.410,
85 F.S.; prohibiting criminal prosecution of a health
86 care facility, provider, or surrogate who acts
87 pursuant to a mental health or substance abuse
88 treatment decision; creating s. 765.411, F.S.;

89 providing for recognition of a mental health and
90 substance abuse treatment advanced directive executed
91 in another state if it complies with the laws of this
92 state; amending ss. 395.0197, 395.1051, 456.0575,
93 765.101, and 765.104, F.S.; conforming cross-
94 references; reenacting ss. 394.459(3)(b), 394.4598(6)
95 and (7), 394.4655(6)(d) and (7)(f), 394.467(6)(d),
96 394.46715, and 765.202(5), F.S., to incorporate the
97 amendment made to s. 394.4598, F.S., in references
98 thereto; providing an effective date.

99
100 Be It Enacted by the Legislature of the State of Florida:

101
102 Section 1. Subsections (1) and (5) of section 394.4598,
103 Florida Statutes, are amended to read:

104 394.4598 Guardian advocate.—

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105 (1) The administrator, a family member of the patient, or
106 an interested party, may petition the court for the appointment
107 of a guardian advocate based upon the opinion of a psychiatrist
108 that the patient is incompetent to consent to treatment. If the
109 court finds that a patient is incompetent to consent to
110 treatment and has not been adjudicated incapacitated and a
111 guardian with the authority to consent to mental health
112 treatment appointed, it shall appoint a guardian advocate. The
113 patient has the right to have an attorney represent him or her
114 at the hearing. If the person is indigent, the court shall
115 appoint the office of the public defender to represent him or
116 her at the hearing. The patient has the right to testify, cross-
117 examine witnesses, and present witnesses. The proceeding shall
118 be recorded either electronically or stenographically, and
119 testimony shall be provided under oath. One of the professionals
120 authorized to give an opinion in support of a petition for
121 involuntary placement, as described in s. 394.4655 or s.
122 394.467, must testify. A guardian advocate must meet the
123 qualifications of a guardian contained in part IV of chapter
124 744, except that a professional referred to in this part, an
125 employee of the facility providing direct services to the
126 patient under this part, a departmental employee, a facility
127 administrator, or member of the Florida local advocacy council
128 shall not be appointed. A person who is appointed as a guardian
129 advocate must agree to the appointment.

130 (5) In selecting a guardian advocate, the court shall give

131 | preference to a health care, mental health care, or substance
 132 | abuse treatment surrogate, if one has already been designated by
 133 | the patient. If the patient has not previously selected a health
 134 | care, mental health care, or substance abuse treatment
 135 | surrogate, except for good cause documented in the court record,
 136 | the selection shall be made from the following list in the order
 137 | of listing:

- 138 | (a) The patient's spouse.
- 139 | (b) An adult child of the patient.
- 140 | (c) A parent of the patient.
- 141 | (d) The adult next of kin of the patient.
- 142 | (e) An adult friend of the patient.
- 143 | (f) An adult trained and willing to serve as guardian
 144 | advocate for the patient.

145 | Section 2. Section 397.803, Florida Statutes, is created
 146 | to read:

147 | 397.803 Substance Abuse Assistance Pilot Program.—

148 | (1) PILOT PROGRAM.—

149 | (a) There is created within the Department of Children and
 150 | Families the Substance Abuse Assistance Pilot Program in such
 151 | regions of the state as may be designated in the general
 152 | appropriations act.

153 | (b) Within available funding, the department shall
 154 | determine a target number of participants in each pilot program
 155 | region.

156 | (c) The pilot program is created to determine whether the

157 provision of comprehensive care through a coordinated system of
158 case management that offers a range of recovery support services
159 during and after treatment for acute episodes leads to increased
160 employment, stability in housing, and decreased involvement in
161 the criminal justice system on the part of participants.

162 (d) The pilot program shall provide a comprehensive
163 continuum of high-quality and accessible substance abuse
164 intervention, residential and outpatient treatment,
165 comprehensive case management, and recovery support services for
166 substance abuse impaired adults.

167 (e) The pilot program in each selected region shall
168 develop safe and cost efficient treatment alternatives and
169 provide comprehensive case management and continuum of care
170 services for eligible substance abuse impaired adults.

171 (f) Participation in the pilot program may be designated
172 as an alternative to criminal imprisonment for substance abuse
173 impaired adults, as appropriate.

174 (g) Each pilot program region shall submit data to the
175 department on a monthly basis that, at a minimum, reports
176 characteristics of the participants, use of services, and such
177 data as necessary to measure changes in participants' status
178 with regard to housing, employment, and criminal activity.

179 (2) ELIGIBILITY AND ENROLLMENT.—

180 (a) To be eligible for participation in the pilot program,
181 a person must:

182 1. Be 18 years of age or older with a history of chronic

183 substance abuse or addiction.

184 2. Execute a mental health or substance abuse treatment
185 directive as defined in s. 765.403. The directive must include a
186 self-binding arrangement as specified in s. 765.408. In the
187 event that an eligible participant does not have a family member
188 or other adult available to serve as a surrogate as defined in
189 s. 765.403, the entity under contract with the Statewide Public
190 Guardianship Office in that region shall be appointed to serve
191 as the surrogate.

192 3. Eligible participants shall share responsibility for
193 the costs of pilot program services according to their ability
194 to pay, based on a sliding fee scale.

195 (b) Maximum enrollment shall be determined by the
196 department, based on available funding.

197 (3) SYSTEM OF CARE; CASE MANAGEMENT; PAYMENT METHOD.—

198 (a) The department shall contract with the Medicaid
199 managed care organization or behavioral health managing entity
200 operating in the applicable geographic region to serve as
201 program manager.

202 (b) The program manager is responsible for the following
203 functions:

204 1. Network management, including recruitment and retention
205 of an adequate number of qualified service providers to ensure
206 accessibility and quality of care;

207 2. Coordination of care, including the development and
208 implementation of organizational structures and operational

209 policies necessary to ensure that the network provides
210 continuity of care and avoids unnecessary duplication of
211 services;

212 3. Comprehensive case management, which may be provided by
213 the program manager or by a contracted service provider,
214 including direct interaction with participants and other
215 activities necessary to assess, plan, implement, and monitor the
216 needed services; and

217 4. Administrative functions for the network including, but
218 not limited to, data management, financial management, and
219 contract compliance.

220 (c) The department shall establish criteria for ensuring
221 that an adequate number of providers are included in the network
222 and for provider qualifications, which shall be specified in the
223 contract with the program manager. The pilot program shall be
224 limited to one network in the region for the duration of the
225 pilot program. The provider network shall:

226 1. Offer a comprehensive range of services for substance
227 abuse impaired or drug addicted adults.

228 2. Enter into agreements with law enforcement agencies and
229 the criminal justice system to divert nonviolent offenders with
230 histories of serious substance abuse or chronic addiction into
231 intensive treatment, comprehensive case management, and
232 rehabilitation services.

233 3. Enter into an agreement with the appropriate
234 neighborhood housing services program to provide housing

235 assistance to eligible participants.

236 4. Enter into an agreement with the entity under contract
237 with the Statewide Public Guardianship Office in the pilot
238 program region to provide guardians to act in the capacity of
239 surrogates for eligible participants who do not have family
240 members or other adults available to perform such duties.

241 5. Enter into an agreement with the applicable nonprofit
242 local legal services organization serving the pilot program
243 region to provide legal assistance to eligible participants.

244 (4) SERVICES.—The network must be capable of providing, at
245 a minimum, the following services to substance abuse impaired or
246 drug addicted adults:

247 1. Comprehensive case management and continuum of care
248 coordination;

249 2. Outpatient treatment services;

250 3. Crisis care, including mobile response, and
251 detoxification in short-term residential facilities;

252 4. Inpatient treatment services;

253 5. Step-down residential treatment services;

254 6. Housing needs assessment and assistance;

255 7. Employment assistance programs;

256 8. Transportation needs assessment and assistance; and

257 9. Legal services.

258 (5) PAYMENT FOR SERVICES.—

259 (a) The general revenue funds appropriated by the
260 Legislature for the purposes of this section shall be applied to

261 payment for services only after an eligible participant's
 262 private pay or Medicaid insurance coverage has been exhausted.

263 (b) An eligible participant may share in the cost of
 264 provided services based on his or her ability to pay.

265 (6) ACCOUNTABILITY; ANNUAL REPORTS.—

266 (a) By October 1 of each year, the department shall
 267 provide a written report to the Governor, the President of the
 268 Senate, and the Speaker of the House of Representatives which
 269 describes the operation and effectiveness of the pilot program.
 270 The report must include, but is not limited to, an evaluation of
 271 the impact of the following components of the program:

- 272 1. Comprehensive case management;
- 273 2. Care coordination and followup care;
- 274 3. Housing initiatives; and
- 275 4. Employment assistance.

276 (b) The report must include a recommendation regarding the
 277 continuation, expansion, or termination of the pilot program.

278 Section 3. Section 765.401, Florida Statutes, is
 279 transferred and renumbered as section 765.311, Florida Statutes.

280 Section 4. Section 765.404, Florida Statutes, is
 281 transferred and renumbered as section 765.312, Florida Statutes.

282 Section 5. The Division of Law Revision and Information is
 283 directed to rename part IV of chapter 765, Florida Statutes, as
 284 "Mental Health and Substance Abuse Advance Directives."

285 Section 6. Section 765.4015 is created to read:
 286 765.4015 Short title.—Sections 765.402-765.411 may be

287 cited as the "Jennifer Act."

288 Section 7. Section 765.402, Florida Statutes, is created
289 to read:

290 765.402 Legislative findings.—

291 (1) The Legislature recognizes that an individual with
292 capacity has the ability to control decisions relating to his or
293 her own mental health care or substance abuse treatment. The
294 Legislature finds that:

295 (a) Substance abuse and some mental illnesses cause
296 individuals to fluctuate between capacity and incapacity;

297 (b) During periods when an individual's capacity is
298 unclear, the individual may be unable to provide informed
299 consent necessary to access needed treatment;

300 (c) Early treatment may prevent an individual from
301 becoming so ill that involuntary treatment is necessary; and

302 (d) Individuals with substance abuse impairment or mental
303 illness need an established procedure to express their
304 instructions and preferences for treatment and provide advance
305 consent to or refusal of treatment. This procedure should be
306 less expensive and less restrictive than guardianship.

307 (2) The Legislature further recognizes that:

308 (a) A mental health or substance abuse treatment advance
309 directive must provide the individual with a full range of
310 choices.

311 (b) For a mental health or substance abuse directive to be
312 an effective tool, individuals must be able to choose how they

313 want their directives to be applied, including the right of
314 revocation, during periods of incapacity.

315 (c) There must be a clear process so that treatment
316 providers can abide by an individual's treatment choices.

317 Section 8. Section 765.403, Florida Statutes, is created
318 to read:

319 765.403 Definitions.—As used in this section, the term:

320 (1) "Adult" means any individual who has attained the age
321 of majority or is an emancipated minor.

322 (2) "Capacity" means that an adult has not been found to
323 be incapacitated pursuant to s. 394.463.

324 (3) "Health care facility" means a hospital, nursing home,
325 hospice, home health agency, or health maintenance organization
326 licensed in this state, or any facility subject to part I of
327 chapter 394.

328 (4) "Incapacity" or "incompetent" means an adult who is:

329 (a) Unable to understand the nature, character, and
330 anticipated results of proposed treatment or alternatives or the
331 recognized serious possible risks, complications, and
332 anticipated benefits of treatments and alternatives, including
333 nontreatment;

334 (b) Physically or mentally unable to communicate a willful
335 and knowing decision about mental health care or substance abuse
336 treatment;

337 (c) Unable to communicate his or her understanding or
338 treatment decisions; or

339 (d) Determined incompetent pursuant to s. 394.463.

340 (5) "Informed consent" means consent voluntarily given by
341 a person after a sufficient explanation and disclosure of the
342 subject matter involved to enable that person to have a general
343 understanding of the treatment or procedure and the medically
344 acceptable alternatives, including the substantial risks and
345 hazards inherent in the proposed treatment or procedures or
346 nontreatment, and to make knowing mental health care or
347 substance abuse treatment decisions without coercion or undue
348 influence.

349 (6) "Mental health or substance abuse treatment advance
350 directive" means a written document in which the principal makes
351 a declaration of instructions or preferences or appoints a
352 surrogate to make decisions on behalf of the principal regarding
353 the principal's mental health or substance abuse treatment, or
354 both.

355 (7) "Mental health professional" means a psychiatrist,
356 psychologist, psychiatric nurse, or social worker, and such
357 other mental health professionals licensed pursuant to chapter
358 458, chapter 464, chapter 490, or chapter 491.

359 (8) "Principal" means a competent adult who executes a
360 mental health or substance abuse treatment directive and on
361 whose behalf mental health care or substance abuse treatment
362 decisions are to be made.

363 (9) "Surrogate" means a competent adult expressly
364 designated by a principal to make mental health care or

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365 substance abuse treatment decisions on behalf of the principal
366 as set forth in the principal's mental health or substance abuse
367 treatment advance directive or self-binding arrangement as those
368 terms are defined in this section.

369 (10) "Self-binding arrangement" means an affirmative
370 statement, also known as a Ulysses Arrangement, contained within
371 a mental health or substance abuse treatment directive, executed
372 voluntarily by the principal, which allows the principal to form
373 self-binding arrangements for mental health or substance abuse
374 treatment as a means of ensuring early intervention and to avoid
375 involuntary commitment. The inclusion of a self-binding
376 arrangement is limited to directives executed by participants in
377 a substance abuse assistance pilot program created pursuant to
378 s. 397.803.

379 Section 9. Section 765.405, Florida Statutes, is created
380 to read:

381 765.405 Mental health or substance abuse treatment advance
382 directive; execution; allowable provisions.—

383 (1) An adult with capacity may execute a mental health or
384 substance abuse treatment advance directive.

385 (2) A directive executed in accordance with this section
386 is presumed to be valid. The inability to honor one or more
387 provisions of a directive does not affect the validity of the
388 remaining provisions.

389 (3) A directive may include any provision relating to
390 mental health or substance abuse treatment or the care of the

391 principal or the principal's personal affairs. Without
392 limitation, a directive may include:

393 (a) The principal's preferences and instructions for
394 mental health or substance abuse treatment.

395 (b) Consent to specific types of mental health or
396 substance abuse treatment.

397 (c) Refusal to consent to specific types of mental health
398 or substance abuse treatment.

399 (d) Consent to admission to and retention in a facility
400 for mental health or substance abuse treatment for up to 14
401 days. Such consent must be an affirmative statement contained
402 within the directive and must clearly indicate whether such
403 consent is revocable by the principal during a mental health or
404 substance abuse crisis.

405 (e) Descriptions of situations that may cause the
406 principal to experience a mental health or substance abuse
407 crisis.

408 (f) Suggested alternative responses that may supplement or
409 be in lieu of direct mental health or substance abuse treatment,
410 such as treatment approaches from other providers.

411 (g) Appointment of a surrogate to make mental health or
412 substance abuse treatment decisions on the principal's behalf.
413 In the event the directive includes a self-binding arrangement
414 allowing the surrogate authority to consent on the principal's
415 behalf to voluntary admission to inpatient mental health or
416 substance abuse treatment, such authority must be clearly stated

417 in the directive.

418 (h) The principal's nomination of a guardian, limited
419 guardian, or guardian advocate as provided chapter 744.

420 (4) A directive may be combined with or be independent of
421 a nomination of a guardian or other durable power of attorney.

422 Section 10. Section 765.406, Florida Statutes, is created
423 to read:

424 765.406 Execution of a mental health or substance abuse
425 advanced directive; effective date; expiration.-

426 (1) A directive must:

427 (a) Be in writing.

428 (b) Contain language that clearly indicates that the
429 principal intends to create a directive.

430 (c) Contain language that clearly indicates whether the
431 principal intends for the surrogate to have the authority to
432 provide consent on the principal's behalf to voluntary admission
433 to inpatient mental health or substance abuse treatment and
434 whether the principal's consent is revocable.

435 (d) Be dated and signed by the principal or, if the
436 principal is unable to sign, at the principal's direction in the
437 principal's presence.

438 (e) Be witnessed by two adults, each of whom must declare
439 that he or she personally knows the principal and was present
440 when the principal dated and signed the directive, and that the
441 principal did not appear to be incapacitated or acting under
442 fraud, undue influence, or duress. The person designated as

443 surrogate may not act as a witness to the execution of the
444 document designating the mental health or substance abuse care
445 treatment surrogate. At least one person who acts as a witness
446 must be neither the principal's spouse nor his or her blood
447 relative.

448 (2) A directive is valid upon execution, but all or part
449 of the directive may take effect at a later date as designated
450 by the principal in the directive.

451 (3) A directive may:

452 (a) Be revoked, in whole or in part, pursuant to s.
453 765.407; or

454 (b) Expire under its own terms.

455 (4) A directive does not or may not:

456 (a) Create an entitlement to mental health, substance
457 abuse, or medical treatment or supersede a determination of
458 medical necessity.

459 (b) Obligate a health care provider, professional person,
460 or health care facility to pay the costs associated with the
461 treatment requested.

462 (c) Obligate a health care provider, professional person,
463 or health care facility to be responsible for the nontreatment
464 or personal care of the principal or the principal's personal
465 affairs outside the scope of services the facility normally
466 provides.

467 (d) Replace or supersede any will or testamentary document
468 or supersede the provision of intestate succession.

469 (e) Be revoked by an incapacitated principal unless that
470 principal selected the option to permit revocation while
471 incapacitated at the time his or her directive was executed.

472 (f) Be used as the authority for inpatient admission for
473 more than 14 days.

474 Section 11. Section 765.407, Florida Statutes, is created
475 to read:

476 765.407 Revocation; waiver.—

477 (1) (a) A principal with capacity may, by written statement
478 of the principal or at the principal's direction in the
479 principal's presence, revoke a directive in whole or in part.

480 (b) An incapacitated principal may revoke a directive only
481 if he or she elected at the time of executing the directive to
482 be able to revoke when incapacitated.

483 (2) The principal shall provide a copy of his or her
484 written statement of revocation to his or her agent, if any, and
485 to each health care provider, professional person, or health
486 care facility that received a copy of the directive from the
487 principal.

488 (3) The written statement of revocation is effective as to
489 a health care provider, professional person, or health care
490 facility upon receipt. The professional person, health care
491 provider, or health care facility, or persons acting under their
492 direction, shall make the statement of revocation part of the
493 principal's medical record.

494 (4) A directive also may:

495 (a) Be revoked, in whole or in part, expressly or to the
496 extent of any inconsistency, by a subsequent directive; or

497 (b) Be superseded or revoked by a court order, including
498 any order entered in a criminal matter. A directive may be
499 superseded by a court order regardless of whether the order
500 contains an explicit reference to the directive. A directive may
501 not be interpreted in a manner that interferes with:

502 1. Incarceration or detention by the Department of
503 Corrections or in a municipal or county jail; or

504 2. Treatment of a principal who is a subject to
505 involuntary treatment pursuant to chapter 394.

506 (5) A directive that would have otherwise expired but is
507 effective because the principal is incapacitated remains
508 effective until the principal is no longer incapacitated unless
509 the principal elected to be able to revoke while incapacitated
510 and has revoked the directive.

511 (6) When a principal with capacity consents to treatment
512 that differs from, or refuses treatment consented to in, his or
513 her directive, the consent or refusal constitutes a waiver of a
514 particular provision and does not constitute a revocation of the
515 provision or the directive unless that principal also revokes
516 the provision or directive.

517 Section 12. Section 765.408, Florida Statutes, is created
518 to read:

519 765.408 Self-binding arrangements.—

520 (1) The Legislature finds that each competent adult has

521 the fundamental right of self-determination regarding decisions
522 pertaining to his or her own mental health care or substance
523 abuse treatment decisions.

524 (2) The Legislature further finds that the facilitation of
525 advance planning helps:

526 (a) Prevent unnecessary involuntary commitment and
527 incarceration;

528 (b) Improve patient safety and health; and

529 (c) Improve care and enable patients to exercise control
530 over their treatment.

531 (3) To ensure such right is not lost or diminished, the
532 Legislature intends that a procedure be established to allow a
533 person to plan for episodes that compromise his or her ability
534 to recognize his or her need for treatment before meeting
535 involuntary commitment criteria. The principal must include a
536 specific provision in his or her mental health and substance
537 abuse advance directive authorizing the surrogate to direct the
538 course of his or her mental health or substance abuse treatment.

539 (4) A principal has a right to form a self-binding
540 arrangement for care, which allows the principal to obtain
541 treatment in the event that an acute episode renders him or her
542 unable to provide consent to or induces the principal to refuse
543 treatment. Such arrangement must be affirmatively stated in the
544 directive and include whether the principal has the right of
545 revocation during an acute episode.

546 (5) To create an arrangement under this section, the

547 principal must obtain a written, signed attestation of capacity
548 from a health care professional, mental health care provider, or
549 health care facility.

550 (6) A self-binding arrangement must:

551 (a) Be in writing.

552 (b) Be dated and signed by the principal or the
553 principal's designated representative if the principal is unable
554 to sign.

555 (c) State whether the principal wishes to be able to
556 revoke the directive at any time or whether directive remains
557 irrevocable when the principal is unable to consent to treatment
558 or is incapacitated. Failure to clarify whether the directive is
559 revocable does not render it unenforceable. If the directive
560 fails to state whether it is revocable, the principal may revoke
561 it at any time.

562 (d) Contain a clear affirmation that the principal is
563 aware of the nature of the document signed and that the
564 directive was signed freely and voluntarily.

565 (e) Be witnessed by at least two adults. A witness may not
566 be:

567 1. A member of the principal's treatment team;

568 2. Related to the principal by blood, adoption, or
569 marriage;

570 3. Be in a romantic or dating relationship with the
571 principal;

572 4. The surrogate named by the principal in the signed

573 directive; or

574 5. The owner, operator, or employee of, or a relative of
575 the owner or operator of, a treatment facility in which the
576 principal is a patient.

577 (f) Be witnessed by persons who attest that:

578 1. They were present when the principal signed the
579 directive;

580 2. The principal did not appear incapacitated or under
581 undue influence or duress when the principal signed the
582 directive; and

583 3. The principal presented identification or the witness
584 personally knows the principal.

585 (g) If it contains a provision that the directive is
586 irrevocable, contain a written, signed attestation from a mental
587 health professional that the principal had capacity at the time
588 the directive was executed. If the principal is free to revoke
589 the directive at any time, such attestation is not required.

590 (h) Be valid upon execution.

591 (i) Contain a designated activation standard other than
592 the principal's inability to provide consent or incapacity by
593 describing the circumstances under which the directive becomes
594 active.

595 (j) Affirmatively state that despite activation, a
596 directive does not prevail over contemporaneous preferences
597 expressed by a principal who has the ability to consent to
598 treatment or capacity and has not included a self-binding

599 arrangement provision in the directive.

600 (k) Appoint a surrogate to make all health care and
601 substance abuse treatment decisions for the principal, including
602 decisions to consent on behalf of the principal to inpatient
603 mental health or substance abuse treatment.

604 (l) Contain a provision that decisions made by a surrogate
605 for a principal's mental health care or substance abuse
606 treatment are effective without judicial approval.

607 Section 13. Section 765.409, Florida Statutes, is created
608 to read:

609 765.409 Admission to inpatient treatment; effect of
610 directive.—

611 (1) A principal may be admitted for inpatient mental
612 health or substance abuse treatment only if he or she:

613 (a) Chose not to be able to revoke his or her directive
614 during any period of inability to provide consent or incapacity;

615 (b) Consented to voluntary admission to inpatient mental
616 health or substance abuse treatment, or authorized a surrogate
617 to consent on the principal's behalf;

618 (c) At the time of admission to inpatient treatment,
619 refuses to be admitted; and

620 (d) The principal created an irrevocable directive that
621 consents to treatment and which the principal is refusing under
622 the influence of a mental health or substance abuse crisis.

623 (2) The creation of an irrevocable directive of consent to
624 inpatient treatment creates a rebuttable presumption of

625 incapacity.

626 (3) (a) The principal may only be admitted to, or remain
627 in, inpatient treatment for a period of up to 14 days.

628 (b) The principal's directive must contain express consent
629 to the administration of psychotropic medication in
630 contravention of illness-induced objections. Such medication may
631 be administered by licensed psychiatrists and only if two
632 psychiatrists recommend, in writing, the specific medication.

633 (c) The principal is prohibited from authorizing
634 psychosurgery or electroconvulsive therapy in his or her
635 directive.

636 (d) The principal may seek injunctive relief for release
637 from the inpatient facility.

638 Section 14. Section 765.410, Florida Statutes, is created
639 to read:

640 765.410 Immunity from liability; weight of proof;
641 presumption.-

642 (1) A health care facility, provider, or other person who
643 acts under the direction of a health care facility or provider
644 is not subject to criminal prosecution or civil liability, and
645 may not be deemed to have engaged in unprofessional conduct, as
646 a result of carrying out a mental health care or substance abuse
647 treatment decision made in accordance with this section. The
648 surrogate who makes a mental health care or substance abuse
649 treatment decision on a principal's behalf, pursuant to this
650 section, is not subject to criminal prosecution or civil

651 liability for such action.

652 (2) This section applies unless it is shown by a
653 preponderance of the evidence that the person authorizing or
654 effectuating a mental health or substance abuse treatment
655 decision did not, in good faith, comply with this section.

656 Section 15. Section 765.411, Florida Statutes, is created
657 to read:

658 765.411 Recognition of mental health and substance abuse
659 treatment advance directive executed in another state.—A mental
660 health or substance abuse treatment advance directive executed
661 in another state in compliance with the law of that state is
662 validly executed for the purposes of this chapter.

663 Section 16. Paragraph (d) of subsection (1) of section
664 395.0197, Florida Statutes, is amended to read:

665 395.0197 Internal risk management program.—

666 (1) Every licensed facility shall, as a part of its
667 administrative functions, establish an internal risk management
668 program that includes all of the following components:

669 (d) A system for informing a patient or an individual
670 identified pursuant to s. 765.311(1) ~~765.401(1)~~ that the patient
671 was the subject of an adverse incident, as defined in subsection
672 (5). Such notice shall be given by an appropriately trained
673 person designated by the licensed facility as soon as
674 practicable to allow the patient an opportunity to minimize
675 damage or injury.

676 Section 17. Section 395.1051, Florida Statutes, is amended

677 to read:

678 395.1051 Duty to notify patients.—An appropriately trained
 679 person designated by each licensed facility shall inform each
 680 patient, or an individual identified pursuant to s. 765.311(1)
 681 ~~765.401(1)~~, in person about adverse incidents that result in
 682 serious harm to the patient. Notification of outcomes of care
 683 that result in harm to the patient under this section shall not
 684 constitute an acknowledgment or admission of liability, nor can
 685 it be introduced as evidence.

686 Section 18. Section 456.0575, Florida Statutes, is amended
 687 to read:

688 456.0575 Duty to notify patients.—Every licensed health
 689 care practitioner shall inform each patient, or an individual
 690 identified pursuant to s. 765.311(1) ~~765.401(1)~~, in person about
 691 adverse incidents that result in serious harm to the patient.
 692 Notification of outcomes of care that result in harm to the
 693 patient under this section shall not constitute an
 694 acknowledgment of admission of liability, nor can such
 695 notifications be introduced as evidence.

696 Section 19. Subsection (15) of section 765.101, Florida
 697 Statutes, is amended to read:

698 765.101 Definitions.—As used in this chapter:

699 (15) "Proxy" means a competent adult who has not been
 700 expressly designated to make health care decisions for a
 701 particular incapacitated individual, but who, nevertheless, is
 702 authorized pursuant to s. 765.311 ~~765.401~~ to make health care

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703 decisions for such individual.

704 Section 20. Subsection (4) of section 765.104, Florida
705 Statutes, is amended to read:

706 765.104 Amendment or revocation.—

707 (4) Any patient for whom a medical proxy has been
708 recognized under s. 765.311 ~~765.401~~ and for whom any previous
709 legal disability that precluded the patient's ability to consent
710 is removed may amend or revoke the recognition of the medical
711 proxy and any uncompleted decision made by that proxy. The
712 amendment or revocation takes effect when it is communicated to
713 the proxy, the health care provider, or the health care facility
714 in writing or, if communicated orally, in the presence of a
715 third person.

716 Section 21. Paragraph (b) of subsection (3) of s. 394.459,
717 subsections (6) and (7) of s. 394.4598, paragraph (d) of
718 subsection (6) and paragraph (f) of subsection (7) of s.
719 394.4655, paragraph (d) of subsection (6) of s. 394.467, s.
720 394.46715, and subsection (5) of s. 765.202, Florida Statutes,
721 are reenacted for the purpose of incorporating the amendments
722 made to s. 394.4598, Florida Statutes, in references thereto.

723 Section 22. This act shall take effect July 1, 2015.