

By Senator Brandes

24-00700A-17

2017804__

1 A bill to be entitled
2 An act relating to electronic health records; amending
3 s. 765.101, F.S.; redefining the terms "health care
4 decision" and "incapacity" or "incompetent"; creating
5 s. 765.114, F.S.; authorizing a person to donate his
6 or her electronic health records, subject to certain
7 requirements; authorizing electronic health records
8 and qualified electronic health records to be donated
9 to specified entities for specified purposes;
10 providing a form for a uniform donor card; requiring
11 electronic health records and qualified electronic
12 health records donated by a health care surrogate to
13 be de-identified; authorizing a donor to amend the
14 terms or revoke an electronic health records donation
15 in specified manners; creating s. 765.1141, F.S.;
16 requiring the Agency for Health Care Administration
17 and the Department of Highway Safety and Motor
18 Vehicles to develop and implement a program that
19 encourages and authorizes persons to donate electronic
20 health records and qualified electronic health records
21 as part of a process of issuing and renewing
22 identification cards and driver licenses; requiring
23 specified information to be included in the donor
24 registration card distributed by the department;
25 requiring the agency and the department to develop and
26 implement a program to identify donors through
27 notations on identification cards and driver licenses;
28 requiring the agency to provide certain supplies and
29 forms, and the department to provide a recordkeeping
30 system; prohibiting the department and agency from
31 incurring liability in connection with the performance
32 of certain acts; requiring the department to maintain

24-00700A-17

2017804__

33 a link on its website referring visitors to an
34 electronic health records repository under certain
35 circumstances; requiring rulemaking; amending s.
36 765.203, F.S.; revising the suggested form for
37 designation of a health care surrogate to expand
38 health care decision authority of the health care
39 surrogate; providing an effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

43 Section 1. Paragraph (e) is added to subsection (6) of
44 section 765.101, Florida Statutes, and subsection (10) of that
45 section is amended, to read:

46 765.101 Definitions.—As used in this chapter:

47 (6) "Health care decision" means:

48 (e) The right of a health care surrogate or proxy to donate
49 the principal's electronic health records and qualified
50 electronic health records, as defined in s. 408.051, upon the
51 principal's death to an approved medical or dental school,
52 college, university, hospital, or repository that collects,
53 stores, and shares de-identified electronic health records in
54 the public domain for purposes of educating or developing
55 diagnoses, treatment choices, policies, health care system
56 designs, and innovations in order to improve health outcomes and
57 reduce health care costs. For purposes of this paragraph, the
58 term "approved" means approved by the Department of Health.

59 (10) "Incapacity" or "incompetent" means the patient is
60 physically or mentally unable to communicate a willful and
61 knowing health care decision. For the purposes of making an

24-00700A-17

2017804__

62 anatomical gift or donating electronic health records or
63 qualified electronic health records, the term also includes a
64 patient who is deceased.

65 Section 2. Section 765.114, Florida Statutes, is created to
66 read:

67 765.114 Donating electronic health records and qualified
68 electronic health records.-

69 (1) A person may donate all or part of his or her
70 electronic health records or qualified electronic health records
71 by doing any of the following:

72 (a) Signing an electronic health records donor card.

73 (b) Indicating an intent to donate on his or her driver
74 license or identification card issued by the Department of
75 Highway Safety and Motor Vehicles. Revocation, suspension,
76 expiration, or cancellation of the driver license or
77 identification card does not invalidate the intent to donate.

78 (c) Expressing a wish to donate in a living will or other
79 advance directive.

80 (d) Expressing a wish to donate in a will. The donation
81 becomes effective upon the death of the testator without waiting
82 for probate. If the will is not probated or if it is declared
83 invalid for testamentary purposes, the donation is nevertheless
84 valid to the extent that it has been acted upon in good faith.

85 (e) Expressing a wish to donate in a document other than a
86 will. The document must be signed by the donor in the presence
87 of two adult witnesses, who must sign the document in the
88 donor's presence. If the donor cannot sign, the document may be
89 signed by another person at the donor's direction and in his or
90 her presence and in the presence of two witnesses, who must sign

24-00700A-17

2017804__

91 the document in the donor's presence. Delivery of the document
92 during the donor's lifetime is not necessary to make the intent
93 to donate valid. The following form of written document is
94 sufficient for any person to make a donation of electronic
95 health records or qualified electronic health records for the
96 purposes of this part:

97
98 UNIFORM ELECTRONIC HEALTH RECORDS DONOR CARD
99

100 The undersigned hereby makes this health records donation, to
101 take effect on death. The words and marks below indicate my
102 desires:

103 I give:

- 104 1. all electronic health records;
- 105 2. only the following electronic health records:

106 ...[Specify the health records]...

107 for the purpose of medical research or education.

108
109 Signed by the donor and the following witnesses in the presence
110 of each other:

111
112 ...(Signature of donor)... ...(Date of birth of donor)...

113 ...(Date signed)... ...(City and State)...

114
115 ...(Witness)... ...(Witness)...

116 ...(Address)... ...(Address)...

117
118 (2) The de-identified electronic health records may be
119 given to one or more donees that are accredited medical or

24-00700A-17

2017804__

120 dental schools, colleges, universities, hospitals, or
121 repositories for the purposes of educating or developing
122 diagnoses, treatment choices, policies, health care system
123 designs, and innovations to improve health outcomes and reduce
124 health care costs. The donees must be approved by the Department
125 of Health and may be specified by name.

126 (3) Any electronic health records donated by a health care
127 surrogate designated by the decedent pursuant to part II of this
128 chapter must be de-identified, and such donation must be made by
129 a document signed by that person or made by that person's
130 witnessed telephonic discussion, telegraphic message, or other
131 recorded message.

132 (4) A donor may amend the terms of or revoke a donation of
133 electronic health records by any of the following means:

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

137 (b) An oral statement that is made in the presence of two
138 adult witnesses, one of whom is not a family member, and
139 communicated to the donor's family or attorney or to the donee.
140 An oral statement is effective only if the medical or dental
141 school, college, university, hospital, or repository has actual
142 notice of the oral amendment or revocation.

143 (c) An oral statement made during a terminal illness or
144 injury addressed to the primary physician, who must communicate
145 the revocation of the gift to the medical or dental school,
146 college, university, hospital, or repository.

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

148 (e) A later-executed document of donation which amends or

24-00700A-17

2017804__

149 revokes a previous health records donation or portion of a
150 health records donation, either expressly or by inconsistency.

151 (f) The destruction or cancellation, with the intent to
152 revoke the donation, of the document that indicates the intent
153 to donate or the destruction or cancellation of that portion of
154 the document which indicates the intent to donate.

155 Section 3. Section 765.1141, Florida Statutes, is created
156 to read:

157 765.1141 Electronic health records donations as part of
158 driver license or identification card process.-

159 (1) The Agency for Health Care Administration and the
160 Department of Highway Safety and Motor Vehicles shall develop
161 and implement a program encouraging and authorizing persons to
162 donate electronic health records and qualified electronic health
163 records, as defined in s. 408.051, as a part of the process of
164 issuing and renewing identification cards and driver licenses.
165 The donor registration card distributed by the department must
166 include the information and signatures required in the uniform
167 electronic health records donor card under s. 765.114(1)(e) and
168 such additional information as determined necessary by the
169 department. The department shall also develop and implement a
170 program to identify donors which includes notations on
171 identification cards and driver licenses to clearly indicate the
172 individual's intent to donate his or her electronic health
173 records. The agency shall provide the necessary supplies and
174 forms using appropriated funds or contributions from interested
175 voluntary, nonprofit organizations. The department shall provide
176 the necessary recordkeeping system using appropriated funds. The
177 department and the agency do not incur liability in connection

24-00700A-17

2017804__

178 with the performance of any act authorized in this section.

179 (2) The department shall maintain an integrated link on its
 180 website referring a visitor renewing an identification card or a
 181 driver license or conducting other business to an electronic
 182 health records repository if available.

183 (3) The department, after consultation with and concurrence
 184 by the agency, shall adopt rules to implement this section
 185 pursuant to chapter 120.

186 Section 4. Section 765.203, Florida Statutes, is amended to
 187 read:

188 765.203 Suggested form of designation.—A written
 189 designation of a health care surrogate executed pursuant to this
 190 chapter may, but need not be, in the following form:

191

DESIGNATION OF HEALTH CARE SURROGATE

192

193
 194 I, ...(name)..., designate as my health care surrogate under s.
 195 765.202, Florida Statutes:

196

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

198 Address: ...(address)...

199 Phone: ...(telephone)...

200

201 If my health care surrogate is not willing, able, or reasonably
 202 available to perform his or her duties, I designate as my
 203 alternate health care surrogate:

204

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

206 Address: ...(address)...

24-00700A-17

2017804__

207 Phone: ...(telephone)...

208

209 INSTRUCTIONS FOR HEALTH CARE

210

211 I authorize my health care surrogate to:

212 ...(Initial here)... Receive any of my health information,
213 whether oral or recorded in any form or medium, that:

214 1. Is created or received by a health care provider, health
215 care facility, health plan, public health authority, employer,
216 life insurer, school or university, or health care
217 clearinghouse; and

218 2. Relates to my past, present, or future physical or
219 mental health or condition; the provision of health care to me;
220 or the past, present, or future payment for the provision of
221 health care to me.

222 I further authorize my health care surrogate to:

223 ...(Initial here)... Make all health care decisions for me,
224 which means he or she has the authority to:

225 1. Provide informed consent, refusal of consent, or
226 withdrawal of consent to any and all of my health care,
227 including life-prolonging procedures.

228 2. Apply on my behalf for private, public, government, or
229 veterans' benefits to defray the cost of health care.

230 3. Access my health information reasonably necessary for
231 the health care surrogate to make decisions involving my health
232 care and to apply for benefits for me.

233 4. Decide to make an anatomical gift pursuant to part V of
234 chapter 765, Florida Statutes.

235 5. Donate my electronic health records and qualified

24-00700A-17

2017804__

236 electronic health records, as defined in s. 408.051, Florida
 237 Statutes, to one or more accredited medical or dental schools,
 238 colleges, universities, hospitals, or repositories, approved by
 239 the Department of Health, to share my de-identified health
 240 records for purposes of developing diagnoses, treatment choices,
 241 policies, health care system designs, and innovations to improve
 242 health outcomes and reduce health care costs.

243 ... (Initial here)... Specific instructions and
 244 restrictions:
 245
 246

247
 248 While I have decisionmaking capacity, my wishes are controlling
 249 and my physicians and health care providers must clearly
 250 communicate to me the treatment plan or any change to the
 251 treatment plan prior to its implementation.

252
 253 To the extent I am capable of understanding, my health care
 254 surrogate shall keep me reasonably informed of all decisions
 255 that he or she has made on my behalf and matters concerning me.

256
 257 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY
 258 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA
 259 STATUTES.

260
 261 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT
 262 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND
 263 THIS DESIGNATION BY:

264 (1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES

24-00700A-17

2017804__

265 MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;

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

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

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

273

274 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
275 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
276 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
277 FOLLOWING BOXES:

278

279 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
280 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
281 IMMEDIATELY.

282

283 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
284 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
285 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,
286 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER
287 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERSEDE
288 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE
289 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

290

291 SIGNATURES: Sign and date the form here:

292 ... (date) ... (sign your name) ...

293 ... (address) ... (print your name) ...

24-00700A-17

2017804__

294 ... (city) (state) ...

295

296 SIGNATURES OF WITNESSES:

297 First witness

Second witness

298 ... (print name) ...

... (print name) ...

299 ... (address) ...

... (address) ...

300 ... (city) (state) ...

... (city) (state) ...

301 ... (signature of witness) ...

... (signature of witness) ...

302 ... (date) ...

... (date) ...

303 Section 5. This act shall take effect July 1, 2017.