

1 A bill to be entitled

2 An act relating to designating a competent adult to serve as a surrogate to make health
3 care decisions for the minor when the parents, legal custodian or legal guardian of the
4 minor cannot be contacted by the health care provider, amending s 743.0645, F.S.;
5 creating a definition of minor's principal, amending s. 765.101 (16), F.S.; providing for a
6 designation of a health care surrogate for a minor, creating s. 765.2035, F.S.; providing a
7 suggested form of designation of health care surrogate for a minor; creating s. 765.2038,
8 F.S; providing an effective date.

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

10 Section 1. Section 743.0645, Florida Statutes, is amended to read:

11 743.0645 Other persons who may consent to medical care or treatment of a minor.--

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

13 (a) "Blood testing" includes Early Periodic Screening, Diagnosis, and Treatment
14 (EPSDT) testing and other blood testing deemed necessary by documented history or
15 symptomatology but excludes HIV testing and controlled substance testing or any other testing
16 for which separate court order or informed consent as provided by law is required.

17 (b) "Medical care and treatment" includes ordinary and necessary medical and dental
18 examination and treatment, including blood testing, preventive care including ordinary
19 immunizations, tuberculin testing, and well-child care, but does not include surgery, general
20 anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a
21 separate court order, health care surrogate designation under s. 765.2035 executed after

RM:7138214:1

22 September 30, 2010, power of attorney executed after July 1, 2001, and prior to October 1, 2010,
23 or informed consent as provided by law is required, except as provided in s. 39.407(3).

24 (c) "Person who has the power to consent as otherwise provided by law" includes a
25 natural or adoptive parent, legal custodian, or legal guardian.

26 (2) Any of the following persons, in order of priority listed, may consent to the medical
27 care or treatment of a minor who is not committed to the Department of Children and Family
28 Services or the Department of Juvenile Justice or in their custody under chapter 39, chapter 984,
29 or chapter 985 when, after a reasonable attempt, a person who has the power to consent as
30 otherwise provided by law cannot be contacted by the treatment provider and actual notice to the
31 contrary has not been given to the provider by that person:

32 (a) A health care surrogate designated under s. 765.2035 after September 30, 2010, or a
33 ~~A person who possesses a power of attorney to provide medical consent for the minor~~ executed
34 prior to October 1, 2010. A health care surrogate designation under s. 765.2035 executed after
35 September 30, 2010, and a power of attorney executed after July 1, 2001, and prior to October 1,
36 2010, to provide medical consent for a minor includes the power to consent to medically
37 necessary surgical and general anesthesia services for the minor unless such services are
38 excluded by the individual executing the health care surrogate for a minor or power of attorney.

39 (b) The stepparent.

40 (c) The grandparent of the minor.

41 (d) An adult brother or sister of the minor.

42 (e) An adult aunt or uncle of the minor.

RM:7138214:1

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

45 (3) The Department of Children and Family Services or the Department of Juvenile
46 Justice caseworker, juvenile probation officer, or person primarily responsible for the case
47 management of the child, the administrator of any facility licensed by the department under
48 s.393.067, s.394.875, or s.409.175, or the administrator of any state-operated or state-contracted
49 delinquency residential treatment facility may consent to the medical care or treatment of any
50 minor committed to it or in its custody under chapter 39, chapter 984, or chapter 985, when the
51 person who has the power to consent as otherwise provided by law cannot be contacted and such
52 person has not expressly objected to such consent. There shall be maintained in the records of the
53 minor documentation that a reasonable attempt was made to contact the person who has the
54 power to consent as otherwise provided by law.

55 (4) The medical provider shall notify the parent or other person who has the power to
56 consent as otherwise provided by law as soon as possible after the medical care or treatment is
57 administered pursuant to consent given under this section. The medical records shall reflect the
58 reason consent as otherwise provided by law was not initially obtained and shall be open for
59 inspection by the parent or other person who has the power to consent as otherwise provided by
60 law.

61 (5) The person who gives consent; a physician, dentist, nurse, or other health care
62 professional licensed to practice in this state; or a hospital or medical facility, including, but not
63 limited to, county health departments, shall not incur civil liability by reason of the giving of
64 consent, examination, or rendering of treatment, provided that such consent, examination, or

RM:7138214:1

treatment was given or rendered as a reasonable prudent person or similar health care professional would give or render it under the same or similar circumstances.

(6) The Department of Children and Family Services and the Department of Juvenile Justice may adopt rules to implement this section.

(7) This section does not affect other statutory provisions of this state that relate to medical consent for minors.

Section 2. Subsection (16) is added to Section 765.101 (16) , Florida Statutes, to read:

765.101 Definitions. --- As used in this chapter:

* * *

(16) "Minor's principal" means a principal who is a natural guardian as defined in s. 744.301(1), legal custodian or, subject to the provisions of ch. 744, legal guardian of the person of a minor.

Section 3. Section 765.2035, Florida Statutes, is created to read:

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

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

RM:7138214:1

86 (2) The person designated as surrogate shall not act as witness to the execution of the
87 document designating the health care surrogate.

88 (3) A document designating a health care surrogate may also designate an alternate
89 surrogate provided the designation is explicit. The alternate surrogate may assume his or her
90 duties as surrogate if the original surrogate is not willing, able, or reasonably available to
91 perform his or her duties. The minor's principal's failure to designate an alternate surrogate shall
92 not invalidate the designation.

93 (4) If neither the designated surrogate nor the designated alternate surrogate is willing,
94 able, or reasonably available to make health care decisions for the minor on behalf of the minor's
95 principal and in accordance with the minor's principal's instructions, the provisions of s.
96 743.0645(2) shall apply as if no surrogate had been designated.

97 (5) A natural guardian as defined in s. 744.301 (1), legal custodian or legal guardian of
98 the person of a minor may designate a separate surrogate consent to mental health treatment for a
99 minor. However, unless the document designating the health care surrogate expressly states
100 otherwise, the court shall assume that the health care surrogate authorized to make health care
101 decisions for a minor under this chapter is also the minor's principal's choice to make decisions
102 regarding mental health treatment for the minor.

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

RM:7138214:1

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

Section 4. Section 765.2038, Florida Statutes, is created to read:

765.2038. Suggested form of designation of health care surrogate for a minor.---

A written designation of a health care surrogate for a minor executed pursuant to this chapter may, but need to be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE
FOR MINOR

I/We, _____,
the _____ natural guardian(s) as defined in s. 744.301 (1); _____ legal custodian(s); _____ legal
guardian(s) [check one] of the following minor(s): _____;
_____, pursuant to s. 765.2035,
designate the following person as my/our surrogate for health care decisions for a minor to act in
the event that I/we am/are not able or reasonably available to provide consent for medical
treatment and surgical and diagnostic procedures:

Name: _____

Address: _____

Zip Code _____

RM:7138214:1

128 Phone: _____

129 If my/our designated health care surrogate for a minor is not willing, able, or reasonably
 130 available to perform his or her duties, I/we designate the following person as my/our alternate
 131 health care surrogate for a minor:

132
 133 Name: _____

134 Address: _____

135 Zip Code _____

136 Phone: _____

137
 138 I/We authorize and request all physicians, hospitals or other providers of medical services
 139 to follow the instructions of my/our surrogate or alternate surrogate, as the case may be, at any
 140 time and under any circumstances whatsoever, with regard to medical treatment and surgical and
 141 diagnostic procedures for a minor, provided the medical care and treatment of any minor is on
 142 the advice of a licensed physician.

143
 144 I/We fully understand that this designation will permit my/our designee to make health
 145 care decisions for a minor and to provide, withhold, or withdraw consent on my/our behalf, to
 146 apply for public benefits to defray the cost of health care, and to authorize the admission or
 147 transfer of a minor to or from a health care facility.

148

RM:7138214:1

149 I/We will notify and send a copy of this document to the following person(s) other than
 150 my/our surrogate, so that they may know the identity of my/our surrogate.

151 Name:

152 Name:

153

154 Signed: _____

155 Date: _____

156 Witnesses:

157 1. _____

158 2. _____

159 Section 5. This Act shall take effect October 1, 2010.