

Understanding the Florida Designation of Health Care Surrogate and Living Will

An Educational Overview of Florida's Health Care Advance Directives,
with Links to the Florida Statutes, Florida Administrative Code, and Federal Law

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. What an Advance Directive Is

An **advance directive** is a written statement, made while a person is able to make decisions, about how health care decisions should be made if that person later cannot make or communicate them. Florida's law on the subject is [Chapter 765, Florida Statutes](#), the Health Care Advance Directives Act. The statute recognizes three main instruments, which are often signed together but do different jobs:

- **Designation of Health Care Surrogate** — names a person to make health care decisions and receive medical information for you (Part II of Chapter 765).
- **Living Will** — states your own wishes about life-prolonging procedures if you have an end-stage condition, a terminal condition, or are in a persistent vegetative state (Part III).
- **Anatomical gift** — directs organ and tissue donation (Part V).

These documents concern **health care** only. They give no authority over money, property, or legal affairs; that is the role of a durable power of attorney under [Chapter 709](#). And they are not the same as a **Do Not Resuscitate Order**, which is a physician's order on a state form (Section 7).

The Legislature's stated policy is that every competent adult has the fundamental right to control decisions about his or her own health, including the right to refuse treatment, and that this right should not be lost when a person becomes incapacitated. See [§ 765.102, Fla. Stat.](#)

2. The Designation of Health Care Surrogate

What the surrogate does

A **health care surrogate** is the person you choose to make health care decisions when you cannot. Under [§ 765.205, Fla. Stat.](#), the surrogate must consult with the treating providers, make decisions the surrogate believes **you** would have made (not what the surrogate would want), provide informed consent, have access to your medical records, apply for public benefits (such as Medicaid) on your behalf, and authorize admission, transfer, or discharge from a health care facility. The surrogate may not consent to abortion, sterilization, electroshock therapy, psychosurgery, experimental treatment not approved by an institutional review board, or voluntary admission to a mental health facility unless the designation specifically permits it ([§ 765.113](#)).

Who may serve

Any competent adult. Most people name a spouse, adult child, or close friend, with at least one **alternate** in case the first choice is unavailable, unwilling, or unable to serve. Naming two people to act jointly is permitted but can create deadlock in an emergency; naming them in order is the common practice.

Signing requirements

Under [§ 765.202, Fla. Stat.](#), the designation must meet these requirements:

- It must be **in writing** and **signed by the principal** (or by another adult at the principal's direction and in the principal's presence);
- It must be signed in the presence of **two adult witnesses**;
- The **person designated as surrogate may not be a witness**; and

- **At least one witness must be neither the principal's spouse nor a blood relative.**

A notary is **not** required by the statute, although many people have the document notarized so it will be readily accepted by out-of-state providers. The statute includes a suggested form at [§ 765.203](#); any form that meets the requirements is valid. A copy must be given to the surrogate, and a copy should be given to your physicians and placed in your medical record.

When the surrogate's authority begins

Ordinarily the surrogate's authority begins only when your attending physician determines, and documents in the medical record, that you **lack capacity** to make health care decisions ([§ 765.204](#)). If the physician has a question about capacity, a second physician must agree. Since 2015, the statute also allows you to state in the document that the surrogate's authority takes effect **immediately**, so the surrogate can assist and receive information even while you still have capacity — in which case your own decisions always control if you and the surrogate disagree ([§ 765.202\(6\)](#)). This immediate-effect option is commonly used by spouses and by elderly parents who want an adult child able to talk to doctors without a formal incapacity finding.

How long it lasts; changing it

A designation remains in effect until you revoke it, and you may make it for a specified period or for a specific illness if you wish. It may be **revoked** at any time by a signed and dated writing, by physically destroying it, by an oral expression of intent to revoke, or by signing a later inconsistent designation. Designation of a **spouse** as surrogate is **automatically revoked by divorce** or annulment unless the document says otherwise. See [§ 765.104, Fla. Stat.](#)

Minors

A parent or legal guardian may designate a surrogate to make health care decisions for a minor child when the parent is not reasonably available, using the procedure in [§ 765.2035, Fla. Stat.](#), and the suggested form in § 765.2038. This is often used by grandparents raising grandchildren or by parents who travel.

3. The Living Will

A **living will** is your own written declaration about whether **life-prolonging procedures** — mechanical ventilation, artificial nutrition and hydration, dialysis, and similar interventions — should be provided, withheld, or withdrawn if you have a **terminal condition**, an **end-stage condition**, or are in a **persistent vegetative state**, and your attending physician and one other physician have determined there is no reasonable medical probability of recovery. Those three terms are defined in [§ 765.101, Fla. Stat.](#), and the determination procedure is in [§ 765.306](#).

A living will must be **signed by the principal in the presence of two witnesses, at least one of whom is neither a spouse nor a blood relative** ([§ 765.302](#)). The statute offers a suggested form at [§ 765.303](#) in which you may also designate a surrogate specifically to carry out the living will. You should tell your physician the living will exists; the physician must make it part of your record, and a provider who is unwilling to comply must transfer your care ([§ 765.1105](#)).

A living will speaks for you directly. A surrogate, by contrast, speaks *on your behalf*. When both exist, the surrogate is bound to follow the living will. Many people sign both so that the living will covers the

end-of-life situations it addresses, and the surrogate covers everything else — surgery consents, medication decisions, rehabilitation placement, and the many situations a living will does not reach.

4. What Happens Without These Documents — The Proxy Statute

If you become incapacitated with no surrogate designation and no court-appointed guardian, Florida law assigns a **proxy** to make decisions, in the following order of priority under [§ 765.401, Fla. Stat.](#):

- A judicially appointed guardian with health care authority (if one exists);
- The patient's **spouse**;
- An **adult child**, or a majority of the adult children who are reasonably available;
- A **parent**;
- An adult sibling, or a majority of adult siblings reasonably available;
- An adult relative who has exhibited special care and concern and has maintained regular contact;
- A **close friend**; and finally
- A licensed clinical social worker selected by the facility's bioethics committee.

The proxy statute often produces a reasonable result, but it has real limits. An **unmarried partner** has no standing at all. Adult children who disagree can deadlock. A person estranged from a spouse but not yet divorced is still represented by that spouse. And a proxy who would withhold or withdraw life-prolonging procedures must meet a higher evidentiary standard (clear and convincing evidence of the patient's wishes) than a surrogate acting under a living will. A signed designation removes all of that uncertainty.

5. Federal Privacy Law (HIPAA)

The federal medical-privacy rule treats a person with authority to make health care decisions for a patient as the patient's **personal representative**, entitled to the same access to medical information the patient would have. See [45 C.F.R. § 164.502\(g\)](#). Providers may also share information with family members involved in a patient's care under [45 C.F.R. § 164.510\(b\)](#). Because hospital staff apply HIPAA cautiously, most Florida surrogate designations include an express HIPAA release authorizing providers to disclose protected health information to the surrogate and alternates, effective immediately. The U.S. Department of Health and Human Services maintains plain-language guidance at hhs.gov/hipaa.

6. Anatomical Gifts

Florida's Revised Uniform Anatomical Gift Act, [§§ 765.510–765.547, Fla. Stat.](#), allows an adult to make a gift of organs, tissues, or the body by a will, a living will or advance directive, the driver license donor designation, or the state donor registry (DonateLifeFlorida.org). A documented gift is binding and cannot be overridden by family members after death. A surrogate may make an anatomical gift on the patient's behalf only if the designation expressly grants that authority.

7. Do Not Resuscitate Orders — A Different Document

A **Do Not Resuscitate Order (DNRO)** is not an advance directive. It is a **physician's order** instructing emergency medical personnel and facilities not to attempt cardiopulmonary resuscitation if the patient's heart or breathing stops. In Florida it is valid only on the Department of Health's official form **DH 1896**, printed on **yellow paper**, signed by both the patient (or surrogate/proxy) and a physician. See [§ 401.45, Fla. Stat.](#), and [Rule 64J-2.018, F.A.C.](#) A living will expresses wishes; a DNRO is the clinical order that paramedics are permitted to follow at the scene. People with a living will who want its instructions honored in an emergency outside a hospital generally need a DNRO as well, obtained through their physician.

8. Other Points Frequently Discussed

- **Out-of-state documents.** An advance directive validly executed in another state is honored in Florida ([§ 765.112](#)). Florida documents are generally honored elsewhere, though some states have stricter witnessing or notary rules; travelers and part-year residents sometimes keep both.
- **Where to keep them.** Copies to the surrogate and alternates, to each physician, and to the hospital of likely admission. A wallet card noting the surrogate's phone number is useful. Florida does not maintain a state advance-directive registry. The original is not required by providers; a copy is as effective as the original ([§ 765.202\(5\)](#)).
- **Pregnancy.** A living will is not effective to withhold or withdraw life-prolonging procedures from a pregnant patient before viability ([§ 765.113\(2\)](#)).
- **Mental health treatment.** The surrogate's authority over mental health treatment and admission is limited by statute (Section 2), and Florida law provides a separate mental health advance directive under [Part VI of Chapter 765](#).
- **Guardianship.** If a court later appoints a guardian, the designation remains in effect unless the court finds the surrogate is not acting in the patient's best interest; a valid designation is a recognized less-restrictive alternative to guardianship under [§ 744.3115](#) and [§ 765.205\(3\)](#).
- **Facility obligations.** Hospitals, nursing homes, and hospices must ask whether you have an advance directive, provide written information about your rights, and place any directive in your record ([§ 765.110](#)). Federal law requires the same of Medicare- and Medicaid-participating providers ([42 U.S.C. § 1395cc\(f\)](#)).
- **Review periodically** — after a marriage, divorce, death of a named surrogate, a move, or a change in your own wishes.

9. Do Your Own Research — Primary Sources

Each link below goes to an official or primary source. If you are reading a printed copy, the full web address is shown.

[Chapter 765, Fla. Stat. — Health Care Advance Directives](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter765>

[§ 765.101 — Definitions \(end-stage condition, terminal condition, persistent vegetative state, etc.\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.101>

[§ 765.102 — Legislative findings and intent](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.102>

[§ 765.104 — Amendment or revocation](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.104>

[§ 765.110 — Health care facilities and providers; discipline](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.110>

[§ 765.1105 — Transfer of a patient](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.1105>

[§ 765.112 — Recognition of advance directive executed in another state](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.112>

[§ 765.113 — Restrictions on providing consent](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.113>

[§ 765.202 — Designation of a health care surrogate](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.202>

[§ 765.203 — Suggested form of designation](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.203>

[§ 765.2035 & § 765.2038 — Designation of surrogate for a minor; suggested form](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.2035>

[§ 765.204 — Capacity of principal; procedure](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.204>

[§ 765.205 — Responsibility of the surrogate](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.205>

[§ 765.302 — Procedure for making a living will](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.302>

[§ 765.303 — Suggested form of a living will](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.303>

[§ 765.306 — Determination of patient condition](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.306>

[§ 765.401 — The proxy \(absence of advance directive\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.401>

[§§ 765.510–765.547 — Revised Uniform Anatomical Gift Act](#)

<https://www.flsenate.gov/Laws/Statutes/2025/765.512>

[§ 401.45 — Denial of emergency treatment; Do Not Resuscitate Orders](#)

<https://www.flsenate.gov/Laws/Statutes/2025/401.45>

[Rule 64J-2.018, F.A.C. — Do Not Resuscitate Order \(Form DH 1896\)](#)

<https://www.flrules.org/gateway/ruleno.asp?id=64J-2.018>

[§ 744.3115 — Advance directives for health care; guardianship](#)

<https://www.flsenate.gov/Laws/Statutes/2025/744.3115>

[Chapter 709, Fla. Stat. — Powers of Attorney \(financial authority — a separate document\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter709>

[45 C.F.R. § 164.502\(g\) — HIPAA; personal representatives](#)

<https://www.law.cornell.edu/cfr/text/45/164.502>

[45 C.F.R. § 164.510\(b\) — HIPAA; disclosures to family and persons involved in care](#)

<https://www.law.cornell.edu/cfr/text/45/164.510>

[42 U.S.C. § 1395cc\(f\) — Patient Self-Determination Act requirements](https://www.law.cornell.edu/uscode/text/42/1395cc)

<https://www.law.cornell.edu/uscode/text/42/1395cc>

[HHS — HIPAA information for individuals](https://www.hhs.gov/hipaa/for-individuals/index.html)

<https://www.hhs.gov/hipaa/for-individuals/index.html>

[Donate Life Florida — state organ and tissue donor registry](https://www.donatelifeflorida.org/)

<https://www.donatelifeflorida.org/>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](https://www.floridabar.org/rules/rrtfb/)

<https://www.floridabar.org/rules/rrtfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf)

https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf

10. Required Disclosures

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Respectfully prepared for your education,

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