

PROBATE CORNER

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Article: Designation Of A Health Care Surrogate For A Minor

The following proposed statute is expected to pass during the next legislative session and become law before this summer. This statute will give a parent or other legal guardian the authority to designate a surrogate to give medical consent for a minor in the parent or the legal custodian's absence. For example, a caretaker being designated as a surrogate for emergency medical treatment while the parents are on vacation and cannot be timely contacted. The proposed statute reads as follows:

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 the minor. Such designation shall be made by a written document which shall be signed by the designator in the presence of two subscribing adult witnesses. If a designator is unable to sign the instrument, such designator may, in the presence of witnesses, direct that another person sign the designator's name as required herein. An exact copy of the instrument shall be provided to the surrogate.

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

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

(4) If neither the designated surrogate nor the designated alternate surrogate is willing, able, or reasonably available to make health care decisions for the minor on behalf of the designator and in accordance with the designator's instructions, the health care facility may seek the appointment of a proxy pursuant to part IV.

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

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

(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 designator's designation of the surrogate and becomes effective pursuant to s. 743.0645(2)(a).