

AN ACT

To amend sections 1337.12, 1337.13, 1337.17, and 2133.02 of the Revised Code to require that certain statements in a living will or a durable power of attorney for health care be in conspicuous type or capital letters and to make other changes in the form of living wills and durable powers of attorney for health care.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1337.12, 1337.13, 1337.17, and 2133.02 of the Revised Code be amended to read as follows:

Sec. 1337.12. (A)(1) An adult who is of sound mind voluntarily may create a valid durable power of attorney for health care by executing a durable power of attorney, in accordance with division (B) of section 1337.09 of the Revised Code, that authorizes an attorney in fact as described in division (A)(2) of this section to make health care decisions for the principal at any time that the attending physician of the principal determines that the principal has lost the capacity to make informed health care decisions for the principal. Except as otherwise provided in divisions (B) to (F) of section 1337.13 of the Revised Code, the authorization may include the right to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any health care that is being or could be provided to the principal. Additionally, to be valid, a durable power of attorney for health care shall satisfy both of the following:

(a) It shall be signed at the end of the instrument by the principal and shall state the date of its execution.

(b) It shall be witnessed in accordance with division (B) of this section or be acknowledged by the principal in accordance with division (C) of this section.

(2) Except as otherwise provided in this division, a durable power of attorney for health care may designate any competent adult as the attorney in fact. The attending physician of the principal and an administrator of any nursing home in which the principal is receiving care shall not be designated as an attorney in fact in, or act as an attorney in fact pursuant to, a durable

power of attorney for health care. An employee or agent of the attending physician of the principal and an employee or agent of any health care facility in which the principal is being treated shall not be designated as an attorney in fact in, or act as an attorney in fact pursuant to, a durable power of attorney for health care, except that these limitations do not preclude a principal from designating either type of employee or agent as the principal's attorney in fact if the individual is a competent adult and related to the principal by blood, marriage, or adoption, or if the individual is a competent adult and the principal and the individual are members of the same religious order.

(3) A durable power of attorney for health care shall not expire, unless the principal specifies an expiration date in the instrument. However, when a durable power of attorney contains an expiration date, if the principal lacks the capacity to make informed health care decisions for the principal on the expiration date, the instrument shall continue in effect until the principal regains the capacity to make informed health care decisions for the principal.

(B) If witnessed for purposes of division (A)(1)(b) of this section, a durable power of attorney for health care shall be witnessed by at least two individuals who are adults and who are not ineligible to be witnesses under this division. Any person who is related to the principal by blood, marriage, or adoption, any person who is designated as the attorney in fact in the instrument, the attending physician of the principal, and the administrator of any nursing home in which the principal is receiving care are ineligible to be witnesses.

The witnessing of a durable power of attorney for health care shall involve the principal signing, or acknowledging the principal's signature ~~on~~, at the end of the instrument in the presence of each witness. Then, each witness shall subscribe the witness's signature ~~on the durable power of attorney for health care~~ after the signature of the principal and, by doing so, attest to the witness's belief that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence. The signatures of the principal and the witnesses under this division are not required to appear on the same page of the instrument.

(C) If acknowledged for purposes of division (A)(1)(b) of this section, a durable power of attorney for health care shall be acknowledged before a notary public, who shall make the certification described in section 147.53 of the Revised Code and also shall attest that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

(D)(1) If a principal has both a valid durable power of attorney for

health care and a valid declaration, division (B) of section 2133.03 of the Revised Code applies. If a principal has both a valid durable power of attorney for health care and a DNR identification that is based upon a valid declaration and if the declaration supersedes the durable power of attorney for health care under division (B) of section 2133.03 of the Revised Code, the DNR identification supersedes the durable power of attorney for health care to the extent of any conflict between the two. A valid durable power of attorney for health care supersedes any DNR identification that is based upon a do-not-resuscitate order that a physician issued for the principal which is inconsistent with the durable power of attorney for health care or a valid decision by the attorney in fact under a durable power of attorney.

(2) As used in division (D) of this section:

(a) "Declaration" has the same meaning as in section 2133.01 of the Revised Code.

(b) "Do-not-resuscitate order" and "DNR identification" have the same meanings as in section 2133.21 of the Revised Code.

Sec. 1337.13. (A)(1) An attorney in fact under a durable power of attorney for health care shall make health care decisions for the principal only if the instrument substantially complies with section 1337.12 of the Revised Code and specifically authorizes the attorney in fact to make health care decisions for the principal, and only if the attending physician of the principal determines that ~~he~~ the principal has lost the capacity to make informed health care decisions for ~~himself~~ the principal. Except as otherwise provided in divisions (B) to (F) of this section and subject to any specific limitations in the instrument, the attorney in fact may make health care decisions for the principal to the same extent as the principal could make those decisions for ~~himself~~ the principal if ~~he~~ the principal had the capacity to do so. Except as otherwise provided in divisions (B) to (F) of this section, in exercising ~~his~~ that authority, the attorney in fact shall act consistently with the desires of the principal or, if the desires of the principal are unknown, shall act in the best interest of the principal.

(2) This section does not affect, and shall not be construed as affecting, any right that the person designated as attorney in fact in a durable power of attorney for health care may have, apart from the instrument, to make or participate in the making of health care decisions on behalf of the principal.

(3) Unless the right is limited in a durable power of attorney for health care, when acting pursuant to the instrument, the attorney in fact has the same right as the principal to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.

(B)(1) An attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to life-sustaining treatment, unless the principal is in a terminal condition or in a permanently unconscious state and unless the applicable requirements of divisions (B)(2) and (3) of this section are satisfied.

(2) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a permanently unconscious state, the consulting physician associated with the determination that the principal is in the permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery or osteopathic medicine and surgery, is qualified to determine whether the principal is in a permanently unconscious state.

(3) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal shall determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for ~~himself~~ the principal.

(C) Except as otherwise provided in this division, an attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to health care necessary to provide comfort care. This division does not preclude, and shall not be construed as precluding, an attorney in fact under a durable power of attorney for health care from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal if, under the circumstances described in division (E) of this section, the attorney in fact would not be prohibited from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal.

(D) An attorney in fact under a durable power of attorney for health care does not have authority to refuse or withdraw informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless the principal's attending physician and at least one other physician who has

xamined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

(E) An attorney in fact under a durable power of attorney for health care does not have authority to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal, unless the principal is in a terminal condition or in a permanently unconscious state and unless the following apply:

(1) The principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.

(2) If the principal is in a permanently unconscious state, the principal has authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to ~~him~~ the principal when ~~he~~ the principal is in a permanently unconscious state by doing both of the following in the durable power of attorney for health care:

(a) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to the principal if ~~he~~ the principal is in a permanently unconscious state and if the determination described in division (E)(1) of this section is made, or checking or otherwise marking a box or line that is adjacent to a similar statement on a printed form of a durable power of attorney for health care;

(b) Placing ~~his~~ the principal's initials or signature underneath or adjacent to the statement, check, or other mark described in division (E)(2)(a) of this section.

(3) If the principal is in a permanently unconscious state, ~~his~~ the principal's attending physician determines, in good faith, that the principal authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to ~~him~~ the principal when ~~he~~ the principal is in a permanently unconscious state by complying with the requirements of divisions (E)(2)(a) and (b) of this section.

(F) An attorney in fact under a durable power of attorney for health care does not have authority to withdraw informed consent to any health care to which the principal previously consented, unless at least one of the following applies:

(1) A change in the physical condition of the principal has significantly

decreased the benefit of that health care to the principal.

(2) The health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use.

Sec. 1337.17. A printed form of durable power of attorney for health care may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of such a printed form, a principal may authorize an attorney in fact to make health care decisions on ~~his~~ the principal's behalf, but the printed form shall not be used as an instrument for granting authority for any other decisions. Any printed form that is sold or otherwise distributed in this state for the purpose described in this section shall include the following notice:

"Notice to Adult Executing This Document

This is an important legal document. Before executing this document, you should know these facts:

This document gives the person you designate (the attorney in fact) the power to make most* health care decisions for you if you lose the capacity to make informed health care decisions for yourself. This power is effective only when your attending physician determines that you have lost the capacity to make informed health care decisions for yourself and, notwithstanding this document, as long as you have the capacity to make informed health care decisions for yourself, you retain the right to make all medical and other health care decisions for yourself.

You may include specific limitations in this document on the authority of the attorney in fact to make health care decisions for you.

Subject to any specific limitations you include in this document, if your attending physician determines that you have lost the capacity to make an informed decision on a health care matter, the attorney in fact generally* will be authorized by this document to make health care decisions for you to the same extent as you could make those decisions yourself, if you had the capacity to do so. The authority of the attorney in fact to make health care decisions for you generally* will include the authority to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

However*, even if the attorney in fact has general authority to make health care decisions for you under this document, the attorney in fact never* will be authorized to do any of the following:

(1) Refuse or withdraw informed consent to life-sustaining treatment (unless your attending physician and one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance

with reasonable medical standards, that either of the following applies:

(a) You are suffering from an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which (i) there can be no recovery and (ii) your death is likely to occur within a relatively short time if life-sustaining treatment is not administered, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself.

(b) You are in a state of permanent unconsciousness that is characterized by you being irreversibly unaware of yourself and your environment and by a total loss of cerebral cortical functioning, resulting in you having no capacity to experience pain or suffering, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself);

(2) Refuse or withdraw informed consent to health care necessary to provide you with comfort care (except that, if ~~he~~ the attorney in fact is not prohibited from doing so under (4) below, the attorney in fact could refuse or withdraw informed consent to the provision of nutrition or hydration to you as described under (4) below). (You should understand that comfort care is defined in Ohio law to mean artificially or technologically administered sustenance (nutrition) or fluids (hydration) when administered to diminish your pain or discomfort, not to postpone your death, and any other medical or nursing procedure, treatment, intervention, or other measure that would be taken to diminish your pain or discomfort, not to postpone your death. Consequently, if your attending physician were to determine that a previously described medical or nursing procedure, treatment, intervention, or other measure will not or no longer will serve to provide comfort to you or alleviate your pain, then, subject to (4) below, your attorney in fact would be authorized to refuse or withdraw informed consent to the procedure, treatment, intervention, or other measure.*);

(3) Refuse or withdraw informed consent to health care for you if you are pregnant and if the refusal or withdrawal would terminate the pregnancy (unless the pregnancy or health care would pose a substantial risk to your life, or unless your attending physician and at least one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive);

(4) Refuse or withdraw informed consent to the provision of artificially or technologically administered sustenance (nutrition) or fluids (hydration) to you, unless:

(a) You are in a terminal condition or in a permanently unconscious state.

(b) Your attending physician and at least one other physician who has examined you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain.

(c) If, but only if, you are in a permanently unconscious state, you authorize the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you by doing both of the following in this document:

(i) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state and if the determination that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain is made, or checking or otherwise marking a box or line (if any) that is adjacent to a similar statement on this document;

(ii) Placing your initials or signature underneath or adjacent to the statement, check, or other mark previously described.

(d) Your attending physician determines, in good faith, that you authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state by complying with the requirements of (4)(c)(i) and (ii) above.

(5) Withdraw informed consent to any health care to which you previously consented, unless a change in your physical condition has significantly decreased the benefit of that health care to you, or unless the health care is not, or is no longer, significantly effective in achieving the purposes for which you consented to its use.

Additionally, when exercising ~~his~~ authority to make health care decisions for you, the attorney in fact will have to act consistently with your desires or, if your desires are unknown, to act in your best interest. You may express your desires to the attorney in fact by including them in this document or by making them known to ~~him~~ the attorney in fact in another manner.

When acting pursuant to this document, the attorney in fact generally* will have the same rights that you have to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records. You can limit that right in this document if you so choose.

Generally, you may designate any competent adult as the attorney in fact under this document. However, you cannot* designate your attending physician or the administrator of any nursing home in which you are receiving care as the attorney in fact under this document. Additionally, you cannot* designate an employee or agent of your attending physician, or an employee or agent of a health care facility at which you are being treated, as the attorney in fact under this document, unless either type of employee or agent is a competent adult and related to you by blood, marriage, or adoption, or unless either type of employee or agent is a competent adult and you and the employee or agent are members of the same religious order.

This document has no expiration date under Ohio law, but you may choose to specify a date upon which your durable power of attorney for health care generally will expire. However, if you specify an expiration date and then lack the capacity to make informed health care decisions for yourself on that date, the document and the power it grants to your attorney in fact will continue in effect until you regain the capacity to make informed health care decisions for yourself.

You have the right to revoke the designation of the attorney in fact and the right to revoke this entire document at any time and in any manner. Any such revocation generally will be effective when you express your intention to make the revocation. However, if you made your attending physician aware of this document, any such revocation will be effective only when you communicate it to your attending physician, or when a witness to the revocation or other health care personnel to whom the revocation is communicated by such a witness communicate it to your attending physician.

If you execute this document and create a valid durable power of attorney for health care with it, it will revoke any prior, valid durable power of attorney for health care that you created, unless you indicate otherwise in this document.

This document is not valid as a durable power of attorney for health care unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when you sign or acknowledge your signature. No person who is related to you by blood, marriage, or adoption may be a witness. The attorney in fact, your attending physician, and the

administrator of any nursing home in which you are receiving care also are ineligible to be witnesses.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you."

In the preceding notice, the single words, and the two sentences in the second set of parentheses in paragraph (2), followed by an asterisk and all of paragraph (4) ~~should~~ shall appear in the printed form in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type.

Sec. 2133.02. (A)(1) An adult who is of sound mind voluntarily may execute at any time a declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment. The declaration shall be signed at the end by the declarant or by another individual at the direction of the declarant, state the date of its execution, and either be witnessed as described in division (B)(1) of this section or be acknowledged by the declarant in accordance with division (B)(2) of this section. The declaration may include a designation by the declarant of one or more persons who are to be notified by the declarant's attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration. The declaration may include a specific authorization for the use or continuation or the withholding or withdrawal of CPR, but the failure to include a specific authorization for the withholding or withdrawal of CPR does not preclude the withholding or withdrawal of CPR in accordance with sections 2133.01 to 2133.15 or sections 2133.21 to 2133.26 of the Revised Code.

(2) Depending upon whether the declarant intends the declaration to apply when the declarant is in a terminal condition, in a permanently unconscious state, or in either a terminal condition or a permanently unconscious state, the declarant's declaration shall use either or both of the terms "terminal condition" and "permanently unconscious state" and shall define or otherwise explain those terms ~~in capital letters and~~ in a manner that is substantially consistent with the provisions of section 2133.01 of the Revised Code.

(3)(a) If a declarant who has authorized the withholding or withdrawal of life-sustaining treatment intends that the declarant's attending physician withhold or withdraw nutrition or hydration when the declarant is in a permanently unconscious state and when the nutrition and hydration will not or no longer will serve to provide comfort to the declarant or alleviate the declarant's pain, then the declarant shall authorize the declarant's attending physician to withhold or withdraw nutrition or hydration when the declarant

is in the permanently unconscious state by doing both of the following in the declaration:

(i) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the declarant's attending physician may withhold or withdraw nutrition and hydration if the declarant is in a permanently unconscious state and if the declarant's attending physician and at least one other physician who has examined the declarant determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to the declarant or alleviate the declarant's pain, or checking or otherwise marking a box or line that is adjacent to a similar statement on a printed form of a declaration;

(ii) Placing the declarant's initials or signature underneath or adjacent to the statement, check, or other mark described in division (A)(3)(a)(i) of this section.

(b) Division (A)(3)(a) of this section does not apply to the extent that a declaration authorizes the withholding or withdrawal of life-sustaining treatment when a declarant is in a terminal condition. The provisions of division (E) of section 2133.12 of the Revised Code pertaining to comfort care shall apply to a declarant in a terminal condition.

(B)(1) If witnessed for purposes of division (A) of this section, a declaration shall be witnessed by two individuals as described in this division in whose presence the declarant, or another individual at the direction of the declarant, signed the declaration. The witnesses to a declaration shall be adults who are not related to the declarant by blood, marriage, or adoption, who are not the attending physician of the declarant, and who are not the administrator of any nursing home in which the declarant is receiving care. Each witness shall subscribe the witness' signature on the declaration after the signature of the declarant or other individual at the direction of the declarant and, by doing so, attest to the witness' belief that the declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence. The signatures of the declarant or other individual at the direction of the declarant under division (A) of this section and of the witnesses under this division are not required to appear on the same page of the declaration.

(2) If acknowledged for purposes of division (A) of this section, a declaration shall be acknowledged before a notary public, who shall make the certification described in section 147.53 of the Revised Code and also shall attest that the declarant appears to be of sound mind and not under or

subject to duress, fraud, or undue influence.

(C) An attending physician, or other health care personnel acting under the direction of an attending physician, who is furnished a copy of a declaration shall make it a part of the declarant's medical record and, when section 2133.05 of the Revised Code is applicable, also shall comply with that section.

(D)(1) Subject to division (D)(2) of this section, an attending physician of a declarant or a health care facility in which a declarant is confined may refuse to comply or allow compliance with the declarant's declaration on the basis of a matter of conscience or on another basis. An employee or agent of an attending physician of a declarant or of a health care facility in which a declarant is confined may refuse to comply with the declarant's declaration on the basis of a matter of conscience.

(2) If an attending physician of a declarant or a health care facility in which a declarant is confined is not willing or not able to comply or allow compliance with the declarant's declaration, the physician or facility promptly shall so advise the declarant and comply with the provisions of section 2133.10 of the Revised Code, or, if the declaration has become operative as described in division (A) of section 2133.03 of the Revised Code, shall comply with the provisions of section 2133.10 of the Revised Code.

(E) As used in this section, "CPR" has the same meaning as in section 2133.21 of the Revised Code.

SECTION 2. That existing sections 1337.12, 1337.13, 1337.17, and 2133.02 of the Revised Code are hereby repealed.

SECTION 3. (A) The amendments made by this act to sections 1337.12, 1337.13, and 1337.17 of the Revised Code do not invalidate an otherwise valid durable power of attorney for health care that was executed prior to the effective date of this act in conformity with those sections as they existed on the date of the execution of the durable power of attorney for health care.

(B) The amendments made by this act to section 2133.02 of the Revised Code do not invalidate an otherwise valid declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment that was executed prior to the effective date of this act in conformity with that section as it existed on the date of the execution of the declaration.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____