

# AN ACT

To amend sections 1337.11 and 1337.14 and to enact sections 2135.01 to 2135.14 of the Revised Code to permit the execution of a Declaration for Mental Health Treatment.

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

SECTION 1. That sections 1337.11 and 1337.14 be amended and sections 2135.01, 2135.02, 2135.03, 2135.04, 2135.05, 2135.06, 2135.07, 2135.08, 2135.09, 2135.10, 2135.11, 2135.12, 2135.13, and 2135.14 of the Revised Code be enacted to read as follows:

Sec. 1337.11. As used in sections 1337.11 to 1337.17 of the Revised Code:

(A) "Adult" means a person who is eighteen years of age or older.

(B) "Attending physician" means the physician to whom a principal or the family of a principal has assigned primary responsibility for the treatment or care of the principal or, if the responsibility has not been assigned, the physician who has accepted that responsibility.

(C) "Comfort care" means any of the following:

(1) Nutrition when administered to diminish the pain or discomfort of a principal, but not to postpone death;

(2) Hydration when administered to diminish the pain or discomfort of a principal, but not to postpone death;

(3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish the pain or discomfort of a principal, but not to postpone death.

(D) "Consulting physician" means a physician who, in conjunction with the attending physician of a principal, makes one or more determinations that are required to be made by the attending physician, or to be made by the attending physician and one other physician, by an applicable provision of sections 1337.11 to 1337.17 of the Revised Code, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(E) "Declaration for mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.

(F) "Guardian" means a person appointed by a probate court pursuant to

Chapter 2111. of the Revised Code to have the care and management of the person of an incompetent.

~~(F)~~(G) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition or physical or mental health.

~~(G)~~(H) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.

~~(H)~~(I) "Health care facility" means any of the following:

- (1) A hospital;
- (2) A hospice care program or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state;
- (3) A nursing home;
- (4) A home health agency;
- (5) An intermediate care facility for the mentally retarded;
- (6) A regulated community mental health organization.

~~(I)~~(J) "Health care personnel" means physicians, nurses, physician assistants, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.

~~(J)~~(K) "Home health agency" has the same meaning as in section ~~3701.88~~ 5101.61 of the Revised Code.

~~(K)~~(L) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.

~~(L)~~(M) "Hospital" has the same meanings as in sections 2108.01, 3701.01, and 5122.01 of the Revised Code.

~~(M)~~(N) "Hydration" means fluids that are artificially or technologically administered.

~~(N)~~(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.

~~(O)~~(P) "Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code.

~~(P)~~(Q) "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a principal, will serve principally to prolong the process of dying.

~~(Q)~~(R) "Medical claim" has the same meaning as in section ~~2305.11~~ 2305.113 of the Revised Code.

(S) "Mental health treatment" has the same meaning as in section

2135.01 of the Revised Code.

~~(R)~~(T) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.

~~(S)~~(U) "Nutrition" means sustenance that is artificially or technologically administered.

~~(T)~~(V) "Permanently unconscious state" means a state of permanent unconsciousness in a principal that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the principal's attending physician and one other physician who has examined the principal, is characterized by both of the following:

- (1) Irreversible unawareness of one's being and environment.
- (2) Total loss of cerebral cortical functioning, resulting in the principal having no capacity to experience pain or suffering.

~~(U)~~(W) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes political subdivisions and governmental agencies, boards, commissions, departments, institutions, offices, and other instrumentalities.

~~(V)~~(X) "Physician" means a person who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

~~(W)~~(Y) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

~~(X)~~(Z) "Professional disciplinary action" means action taken by the board or other entity that regulates the professional conduct of health care personnel, including the state medical board and the board of nursing.

~~(Y)~~(AA) "Regulated community mental health organization" means a residential facility as defined and licensed under section 5119.22 of the Revised Code or a community mental health agency as defined in section 5122.01 of the Revised Code.

(BB) "Terminal condition" means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a principal's attending physician and one other physician who has examined the principal, both of the following apply:

- (1) There can be no recovery.
- (2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

~~(Z)~~(CC) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for

a breach of contract or another agreement between persons.

Sec. 1337.14. (A) A principal who creates a valid durable power of attorney for health care may revoke that instrument or the designation of the attorney in fact under it.

The principal may so revoke at any time and in any manner. The revocation shall be effective when the principal expresses ~~his~~ an intention to so revoke, except that, if the principal made ~~his~~ the principal's attending physician aware of the durable power of attorney for health care, the revocation shall be effective upon its communication to the attending physician by the principal ~~himself~~, a witness to the revocation, or other health care personnel to whom the revocation is communicated by such a witness. Absent actual knowledge to the contrary, the attending physician of the principal and other health care personnel who are informed of the revocation of a durable power of attorney for health care by an alleged witness may rely on the information and act in accordance with the revocation.

(B) Upon the communication as described in division (A) of this section to the attending physician of a principal of the fact that ~~his~~ the principal's durable power of attorney for health care has been revoked, the attending physician or other health care personnel acting under the direction of the attending physician shall make the fact a part of the principal's medical record.

(C) Unless the instrument provides otherwise, a valid durable power of attorney for health care revokes a prior, valid durable power of attorney for health care.

(D) Regardless of when the declaration is drafted, the execution of a declaration for mental health treatment does not revoke a valid durable power of attorney for health care. A declaration for mental health treatment executed in accordance with Chapter 2135. of the Revised Code supersedes a valid durable power of attorney for health care with regard to mental health treatment and the designation of a proxy to make decisions regarding mental health treatment.

Sec. 2135.01. As used in sections 2135.01 to 2135.14 of the Revised Code:

(A) "Adult" means a person who is eighteen years of age or older.

(B) "Capacity to consent to mental health treatment decisions" means the functional ability to understand information about the risks of, benefits of, and alternatives to the proposed mental health treatment, to rationally use that information, to appreciate how that information applies to the declarant, and to express a choice about the proposed treatment.

(C) "Declarant" means an adult who has executed a declaration for mental health treatment in accordance with this chapter.

(D) "Declaration for mental health treatment" or "declaration" means a written document declaring preferences or instructions regarding mental health treatment executed in accordance with this chapter.

(E) "Designated physician" means the physician the declarant has named in a declaration for mental health treatment and has assigned the primary responsibility for the declarant's mental health treatment or, if the declarant has not so named a physician, the physician who has accepted that responsibility.

(F) "Guardian" means a person appointed by a probate court pursuant to Chapter 2111. of the Revised Code to have the care and management of the person of an incompetent.

(G) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition or physical or mental health.

(H) "Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

(I) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.

(J) "Informed consent" means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the nature, purpose, and goal of the treatment or procedures, including the substantial risks and hazards inherent in the proposed treatment or procedures and any alternative treatment or procedures, and to make a knowing health care decision without coercion or undue influence.

(K) "Medical record" means any document or combination of documents that pertains to a declarant's medical history, diagnosis, prognosis, or medical condition and that is generated and maintained in the process of the declarant's health care.

(L) "Mental health treatment" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's mental condition or mental health, including, but not limited to, electroconvulsive or other convulsive treatment, treatment of mental illness with medication, and admission to and retention in a health care facility.

(M) "Mental health treatment decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to mental health treatment.

(N) "Mental health treatment provider" means physicians, physician

assistants, psychologists, licensed independent social workers, licensed professional clinical counselors, and psychiatric nurses.

(O) "Physician" means a person who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(P) "Professional disciplinary action" means action taken by the board or other entity that regulates the professional conduct of health care personnel, including, but not limited to, the state medical board, the state board of psychology, and the state board of nursing.

(Q) "Proxy" means an adult designated to make mental health treatment decisions for a declarant under a valid declaration for mental health treatment.

(R) "Psychiatric nurse" means a registered nurse who holds a master's degree or doctorate in nursing with a specialization in psychiatric nursing.

(S) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

(T) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.

(U) "Registered nurse" has the same meaning as in section 4723.01 of the Revised Code.

(V) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for a breach of contract or another agreement between persons.

Sec. 2135.02. (A) An adult who has the capacity to consent to mental health treatment decisions voluntarily may execute at any time a declaration governing the use or continuation, or the withholding or withdrawal, of mental health treatment. The declaration shall be signed at the end by the declarant, state the date of its execution, and either be witnessed or be acknowledged in accordance with section 2135.06 of the Revised Code. The declaration may include a designation by the declarant of a person to act as a proxy to make decisions regarding mental health treatment pursuant to the declaration, and, if the declaration includes a designation of a proxy, the declaration shall be signed at the end by the designated proxy. The declarant may also specifically designate in the declaration an alternate proxy to act in that role if the original proxy is unable or unwilling to act at any time, and, if the declaration includes a designation of an alternate proxy, the declaration shall be signed at the end by the designated alternate proxy. The declarant may name in the declaration a physician and assign the physician the primary responsibility for the declarant's mental health treatment. The declaration may include a specific authorization for the use or continuation,

or the withholding or withdrawal, of mental health treatment.

(B) A mental health treatment provider or a health care facility providing services to a declarant shall continue to obtain the declarant's informed consent to all mental health treatment decisions if the declarant has the capacity to consent to mental health treatment decisions.

Sec. 2135.03. (A) Except as otherwise provided in this division and subject to division (C) of this section, a declaration for mental health treatment remains valid and effective for three years after its execution unless it is properly revoked. A declaration for mental health treatment may become operative as provided in section 2135.04 of the Revised Code. If the declaration becomes operative, the authority of a proxy named in the declaration continues in effect as long as the declaration designating the proxy is in effect or until the proxy has withdrawn. If a declaration for mental health treatment has become operative and is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant has the capacity to consent to mental health treatment decisions. If a declaration for mental health treatment has not become operative at the expiration of three years after its execution, the declaration may be renewed as provided in division (C)(1) of this section or remains effective as provided in division (C)(2) of this section.

(B) A valid declaration may be revoked in accordance with section 2135.09 of the Revised Code or renewed in accordance with division (C) (1) of this section, but it shall not otherwise be altered or amended after it has been executed. A properly executed declaration is not revoked or invalidated by an alteration of or amendment to the declaration. Any alteration of or amendment to the declaration is not a part of the declaration.

(C) (1) A declarant may renew a declaration once, extending the validity of the document for an additional three-year period from the date of the renewal, by repeating the procedures set forth in section 2135.06 of the Revised Code, if the declarant has included in the declaration a specific authorization for the use or continuation, or the withholding or withdrawal, of mental health treatment, and the declarant makes no change with respect to that authorization. A declarant shall not make any changes to any term or provision of the declaration when renewing under division (C)(1) of this section.

(2) A declaration for mental health treatment that has not become operative at the expiration of three years after its execution remains effective if both of the following apply:

- (a) The declaration designates a proxy or an alternate proxy.
- (b) The declarant does not include in the declaration a specific

authorization for the use or continuation, or the withholding or withdrawal, of mental health treatment.

Sec. 2135.04. (A) A declaration becomes operative when both of the following apply:

(1) The declaration is communicated to a mental health treatment provider of the declarant.

(2) The designated physician or a psychiatrist, and one other mental health treatment provider, who examine the declarant determine that the declarant does not have the capacity to consent to mental health treatment decisions. At least one of the two persons who make this determination shall not currently be involved in the declarant's treatment at the time of the determination. If a designated physician is named in the declaration and is not one of the two persons who make this determination, then the psychiatrist who makes the determination in lieu of the designated physician shall make a good faith effort to consult with the designated physician as soon as practicable.

(B) A mental health treatment provider for a declarant or a health care facility providing services to a declarant shall make a declaration part of the declarant's medical record and shall note in that record when the declaration is operative.

(C) A mental health treatment provider for a declarant or a health care facility providing services to a declarant shall act in accordance with an operative declaration of the declarant consistent with reasonable medical practice, the availability of treatments requested, and applicable law. The mental health treatment provider or the health care facility shall continue to act in accordance with an operative declaration until the declarant has the capacity to consent to mental health treatment decisions.

(D) An operative declaration of a declarant supersedes any general consent to treatment form signed by the declarant prior to, upon, or after the declarant's admission to a health care facility to the extent there is a conflict between the declaration and the form, even if the declarant signs the form after the execution of the declaration. To the extent that the provisions of a declarant's declaration and a general consent to treatment form signed by the declarant do not conflict, both documents shall govern the use or continuation, or the withholding or withdrawal, of mental health treatment for the declarant. This division does not apply if a declarant revokes a declaration after the declarant signs a general consent to treatment form.

Sec. 2135.05. (A) A declaration may designate an adult to act as a proxy to make decisions about the mental health treatment of the declarant and

may designate an adult as an alternate proxy as described in section 2135.02 of the Revised Code. A proxy designated to make decisions about mental health treatment may make decisions about mental health treatment on behalf of the declarant only when the declaration has become operative. The decisions of the proxy regarding the mental health treatment of the declarant must be consistent with desires the declarant has expressed in the declaration.

(B) The following persons may not serve as a proxy for a declarant:

(1) The declarant's mental health treatment provider, or an employee of the declarant's mental health treatment provider;

(2) The owner, operator, or employee of a health care facility in which the declarant is a patient receiving its services or a resident.

(C) Divisions (B)(1) and (2) of this section do not apply if the declarant and proxy are related by blood, marriage, or adoption.

(D) A proxy may withdraw from a declaration prior to the declaration becoming operative by giving notice to the declarant. If the declaration is operative, a proxy may withdraw by giving written notice to the declarant's mental health treatment provider or the health care facility providing services to the declarant. The mental health treatment provider or the health care facility shall note the withdrawal of a proxy as part of the declarant's medical record.

Sec. 2135.06. (A) A declaration for mental health treatment is valid only if it is signed by the declarant, states the date of its execution, and is either witnessed by two adults or acknowledged before a notary public.

If a proxy, or a proxy and an alternate proxy, have been designated in the declaration, then each proxy also shall sign the declaration, and the signature of each proxy shall be either witnessed by two adults or acknowledged before a notary public, except that, notwithstanding these requirements, both of the following apply:

(1) No declaration shall be invalid or be held invalid because a proxy has not signed the declaration.

(2) If a proxy has not signed the declaration, or if the signature of a proxy named in a valid declaration is not either witnessed by two adults or acknowledged before a notary public, then the designation of the proxy is invalid, but the declaration is not invalid because of the absence of a witnessed or acknowledged signature of a proxy.

(B) If witnessed for purposes of this section, a declaration shall be witnessed by two individuals as described in this division in whose presence the declarant and each designated proxy signs the declaration. Each witness shall subscribe the witness' signature after the signature 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 and any proxy under this section and of the witnesses under this division are not required to appear on the same page of the declaration.

(C) If acknowledged for purposes 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 and each designated proxy appear to be of sound mind and not under or subject to duress, fraud, or undue influence.

(D) The following may not serve as a witness to the signing of a declarant's declaration:

(1) The declarant's mental health treatment provider or a relative or employee of the declarant's mental health treatment provider;

(2) The owner, the operator, or a relative or employee of an owner or operator of a health care facility in which the declarant is a patient receiving its services or a resident;

(3) A person related to the declarant by blood, marriage, or adoption;

(4) A person named as a proxy in the declarant's declaration.

Sec. 2135.07. (A) If a mental health treatment provider of a declarant or a health care facility providing services to a declarant is unwilling at any time to comply with the declarant's declaration, the mental health treatment provider or health care facility promptly shall notify the declarant and any proxy and document the notification in the declarant's medical record. The mental health treatment provider or health care facility that is unwilling to comply with the declarant's declaration shall not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay, the transfer of the declarant to the care of a mental health treatment provider or a health care facility that is willing and able to comply or allow compliance with the declarant's declaration.

(B) The mental health treatment provider of a declarant or a health care facility providing services to a declarant may subject the declarant to treatment in a manner contrary to the declarant's expressed wishes only if either of the following applies:

(1) The declarant has been committed as a patient under Chapter 2945. or 5122. of the Revised Code, and, if the court knows of the declaration, the committing court acknowledges the existence of the declaration and specifically orders treatment in a manner contrary to the declaration.

(2) An emergency situation endangers the life or health of the declarant or others.

Sec. 2135.08. (A) The proxy under a declaration is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant. Except to the extent the right is limited by the declaration or any federal law, a proxy has the same right as the declarant to receive information regarding the proposed mental health treatment of the declarant and to receive, review, and consent to disclosure of the declarant's medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(B) In exercising authority under a declaration, the proxy has a duty to act consistently with the desires of the declarant as expressed in the declaration. If the declarant's desires are not expressed in the declaration, the proxy has a duty to act in what the proxy in good faith believes to be the best interests of the declarant.

(C) A proxy is not subject to criminal prosecution, tort or other civil liability for injury, death, or loss to person or property, or professional disciplinary action for an action taken in good faith under a declaration for mental health treatment.

Sec. 2135.09. (A) A declarant may revoke a declaration at any time the declarant has the capacity to consent to mental health treatment decisions. Any revocation of a declaration by a declarant shall be in writing, signed by the declarant, and dated. The revocation shall be effective upon its communication to the mental health treatment provider of the declarant or the health care facility providing services to the declarant. If the declaration is operative, then the declarant may revoke the declaration after a designated physician or a psychiatrist, and one other mental health treatment provider, who examine the declarant determine that the declarant has the capacity to consent to mental health treatment decisions.

(B) Upon the declarant's revocation of a declaration, the mental health treatment provider or the health care facility shall make the revocation a part of the declarant's medical record.

(C) A valid declaration for mental health treatment revokes a prior, valid declaration for mental health treatment.

(D) The probate judge of the county in which the declarant is located may revoke a declaration if the judge appoints a guardian for the declarant and specifically orders the revocation of the declaration.

Sec. 2135.10. A mental health treatment provider of a declarant, a health care facility providing services to a declarant, or other authorized persons acting under the direction of either a mental health treatment provider of a declarant or a health care facility providing services to a declarant who administer or do not administer mental health treatment according to and in

good faith reliance upon the validity of the declarant's declaration are not subject to criminal prosecution, are not liable in tort or other civil damages for injury, death, or loss to person or property, and are not subject to professional disciplinary action resulting from a subsequent finding of a declaration's invalidity.

Sec. 2135.11. No person shall require an individual to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental health treatment or health care, or as a condition of admission to or discharge from a health care facility.

Sec. 2135.12. (A) A declaration executed in accordance with this chapter shall not supersede a valid declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment executed under Chapter 2133. of the Revised Code.

(B) A declaration executed in accordance with this chapter does not revoke a valid durable power of attorney for health care created under Chapter 1337. of the Revised Code, but a declaration so executed shall supersede the designation of an attorney in fact made in a valid health care power of attorney under Chapter 1337. of the Revised Code with respect to the mental health treatment of the declarant. The designation of an attorney in fact in a valid health care power of attorney under Chapter 1337. of the Revised Code shall remain effective in all other respects.

Sec. 2135.13. (A) A person who opposes any decision arising under this chapter may make an application opposing the decision to the probate division of the court of common pleas of the county in which the declarant is located or in which the declaration was either witnessed or acknowledged as described in this chapter.

(B) If a declarant has not named any proxies in the declaration, or if all the named proxies have withdrawn or are unable or unwilling to act at a time when the declaration has become operative, then the physician who has the primary responsibility for treating the declarant may petition the probate division of the court of common pleas of the county in which the declarant is located to appoint a person to act as a proxy. If the judge of the probate division of the court of common pleas finds it to be in the best interest of the declarant, then the court shall appoint a person to serve as a proxy for the declarant while the declaration is effective. The person so appointed shall be a person who is eligible to serve as a proxy as determined under section 2135.05 of the Revised Code.

Sec. 2135.14. A printed form of a declaration may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of a printed form of that nature, a declarant may consent or refuse to

consent to mental health treatment and may designate a proxy to make mental health treatment decisions in accordance with this chapter. The printed form shall not be used as an instrument for granting any other type of authority or for making any other type of designation, including those declarations that may be made under Chapter 2133. of the Revised Code or designations made under Chapter 1337. of the Revised Code.

SECTION 2. That existing sections 1337.11 and 1337.14 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_