

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 72

**Representatives Oelslager, C. Evans, Hartnett, Hollister, Miller, Olman, Seitz,
Ujvagi**

A B I L L

To amend sections 1337.11 and 1337.14 and to enact 1
sections 2135.01 to 2135.14 of the Revised Code to 2
permit the execution of a Declaration for Mental 3
Health Treatment. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1337.11 and 1337.14 be amended and 5
sections 2135.01, 2135.02, 2135.03, 2135.04, 2135.05, 2135.06, 6
2135.07, 2135.08, 2135.09, 2135.10, 2135.11, 2135.12, 2135.13, and 7
2135.14 of the Revised Code be enacted to read as follows: 8

Sec. 1337.11. As used in sections 1337.11 to 1337.17 of the 9
Revised Code: 10

(A) "Adult" means a person who is eighteen years of age or 11
older. 12

(B) "Attending physician" means the physician to whom a 13
principal or the family of a principal has assigned primary 14
responsibility for the treatment or care of the principal or, if 15
the responsibility has not been assigned, the physician who has 16
accepted that responsibility. 17

(C) "Comfort care" means any of the following: 18

(1) Nutrition when administered to diminish the pain or discomfort of a principal, but not to postpone death;	19 20
(2) Hydration when administered to diminish the pain or discomfort of a principal, but not to postpone death;	21 22
(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.	23 24 25
(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.	26 27 28 29 30 31 32 33
(E) <u>"Declaration for mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.</u>	34 35
(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.	36 37 38
(F) (G) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition <u>or physical or mental health.</u>	39 40 41
(G) (H) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.	42 43 44
(H) (I) "Health care facility" means any of the following:	45
(1) A hospital;	46
(2) A hospice care program or other institution that specializes in comfort care of patients in a terminal condition or	47 48

in a permanently unconscious state;	49
(3) A nursing home;	50
(4) A home health agency;	51
(5) An intermediate care facility for the mentally retarded;	52
<u>(6) A regulated community mental health organization.</u>	53
(I) <u>(J)</u> "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.	54 55 56 57 58 59
(J) <u>(K)</u> "Home health agency" has the same meaning as in section 3701.88 <u>5101.61</u> of the Revised Code.	60 61
(K) <u>(L)</u> "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.	62 63
(L) <u>(M)</u> "Hospital" has the same meanings as in sections 2108.01, 3701.01, and 5122.01 of the Revised Code.	64 65
(M) <u>(N)</u> "Hydration" means fluids that are artificially or technologically administered.	66 67
(N) <u>(O)</u> "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	68 69
(O) <u>(P)</u> "Intermediate care facility for the mentally retarded" has the same meaning as in section 5111.20 of the Revised Code.	70 71
(P) <u>(Q)</u> "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.	72 73 74 75
(Q) <u>(R)</u> "Medical claim" has the same meaning as in section 2305.11 <u>2305.113</u> of the Revised Code.	76 77

<u>(S) "Mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.</u>	78
<u>(S) "Mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.</u>	79
(R) <u>(T)</u> "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.	80
(R) <u>(T)</u> "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.	81
(S) <u>(U)</u> "Nutrition" means sustenance that is artificially or technologically administered.	82
(S) <u>(U)</u> "Nutrition" means sustenance that is artificially or technologically administered.	83
(T) <u>(V)</u> "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:	84
(T) <u>(V)</u> "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:	85
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(T) <u>(V)</u> "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:	89
(1) Irreversible unawareness of one's being and environment.	90
(2) Total loss of cerebral cortical functioning, resulting in the principal having no capacity to experience pain or suffering.	91
(2) Total loss of cerebral cortical functioning, resulting in the principal having no capacity to experience pain or suffering.	92
(U) <u>(W)</u> "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.	93
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(V) <u>(X)</u> "Physician" means a person who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.	97
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(W) <u>(Y)</u> "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.	100
(W) <u>(Y)</u> "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.	101
(X) <u>(Z)</u> "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.	102
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(Y) <u>(AA)</u> " <u>Regulated community mental health organization</u> " means a residential facility as defined and licensed under section	106
(Y) <u>(AA)</u> " <u>Regulated community mental health organization</u> " means a residential facility as defined and licensed under section	107

5119.22 of the Revised Code or a community mental health agency as 108
defined in section 5122.01 of the Revised Code. 109

(BB) "Terminal condition" means an irreversible, incurable, 110
and untreatable condition caused by disease, illness, or injury 111
from which, to a reasonable degree of medical certainty as 112
determined in accordance with reasonable medical standards by a 113
principal's attending physician and one other physician who has 114
examined the principal, both of the following apply: 115

(1) There can be no recovery. 116

(2) Death is likely to occur within a relatively short time 117
if life-sustaining treatment is not administered. 118

~~(Z)~~(CC) "Tort action" means a civil action for damages for 119
injury, death, or loss to person or property, other than a civil 120
action for damages for a breach of contract or another agreement 121
between persons. 122

Sec. 1337.14. (A) A principal who creates a valid durable 123
power of attorney for health care may revoke that instrument or 124
the designation of the attorney in fact under it. 125

The principal may so revoke at any time and in any manner, 126
except that the principal may not revoke the instrument or the 127
designation if the principal has lost the capacity to make 128
informed health care decisions for the principal. The revocation 129
shall be effective when the principal expresses ~~his~~ an intention 130
to so revoke, except that, if the principal made ~~his~~ the 131
principal's attending physician aware of the durable power of 132
attorney for health care, the revocation shall be effective upon 133
its communication to the attending physician by the principal 134
~~himself~~, a witness to the revocation, or other health care 135
personnel to whom the revocation is communicated by such a 136
witness. Absent actual knowledge to the contrary, the attending 137

ysician of the principal and other health care personnel who are 138
informed of the revocation of a durable power of attorney for 139
health care by an alleged witness may rely on the information and 140
act in accordance with the revocation. 141

(B) Upon the communication as described in division (A) of 142
this section to the attending physician of a principal of the fact 143
that ~~his~~ the principal's durable power of attorney for health care 144
has been revoked, the attending physician or other health care 145
personnel acting under the direction of the attending physician 146
shall make the fact a part of the principal's medical record. 147

(C) Unless the instrument provides otherwise, a valid durable 148
power of attorney for health care revokes a prior, valid durable 149
power of attorney for health care. 150

(D) Regardless of when the declaration is drafted, the 151
execution of a declaration for mental health treatment does not 152
revoke a valid durable power of attorney for health care. A 153
declaration for mental health treatment executed in accordance 154
with Chapter 2135. of the Revised Code supersedes a valid durable 155
power of attorney for health care with regard to mental health 156
treatment and the designation of a proxy to make decisions 157
regarding mental health treatment. 158

Sec. 2135.01. As used in sections 2135.01 to 2135.14 of the 159
Revised Code: 160

(A) "Adult" means a person who is eighteen years of age or 161
older. 162

(B) "Capacity to consent to mental health treatment 163
decisions" means the functional ability to understand information 164
about the risks of, benefits of, and alternatives to the proposed 165
mental health treatment, to rationally use that information, to 166
appreciate how that information applies to the declarant, and to 167

<u>express a choice about the proposed treatment.</u>	168
<u>(C) "Declarant" means an adult who has executed a declaration for mental health treatment in accordance with this chapter.</u>	169 170
<u>(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.</u>	171 172 173 174
<u>(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.</u>	175 176 177 178 179
<u>(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.</u>	180 181 182
<u>(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.</u>	183 184 185
<u>(H) "Health care facility" has the same meaning as in section 1337.11 of the Revised Code.</u>	186 187
<u>(I) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.</u>	188 189
<u>(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.</u>	190 191 192 193 194 195 196 197

(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. 198
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(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. 202
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(M) "Mental health treatment decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to mental health treatment. 208
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(N) "Mental health treatment provider" means physicians, physician assistants, psychologists, licensed independent social workers, licensed professional clinical counselors, and psychiatric nurses. 211
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(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. 215
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(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. 218
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(O) "Proxy" means an adult designated to make mental health treatment decisions for a declarant under a valid declaration for mental health treatment. 223
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(R) "Psychiatric nurse" means a registered nurse who holds a master's degree or doctorate in nursing with a specialization in 226
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<u>psychiatric nursing.</u>	228
<u>(S) "Psychiatrist" has the same meaning as in section 5122.01</u>	229
<u>of the Revised Code.</u>	230
<u>(T) "Psychologist" has the same meaning as in section 4732.01</u>	231
<u>of the Revised Code.</u>	232
<u>(U) "Registered nurse" has the same meaning as in section</u>	233
<u>4723.01 of the Revised Code.</u>	234
<u>(V) "Tort action" means a civil action for damages for</u>	235
<u>injury, death, or loss to person or property, other than a civil</u>	236
<u>action for damages for a breach of contract or another agreement</u>	237
<u>between persons.</u>	238

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) A declaration for mental health treatment 266
remains valid and may become operative, as provided in section 267
2135.04 of the Revised Code, for three years after its execution 268
unless it is properly revoked. If the declaration becomes 269
operative, the authority of a proxy named in the declaration 270
continues in effect as long as the declaration designating the 271
proxy is in effect or until the proxy has withdrawn. If a 272
declaration for mental health treatment has become operative and 273
is in effect at the expiration of three years after its execution, 274
the declaration remains effective until the declarant has the 275
capacity to consent to mental health treatment decisions. If a 276
declaration for mental health treatment has not become operative 277
at the expiration of three years after its execution, the 278
declaration expires. 279

(B) A valid declaration may be revoked in accordance with 280
section 2135.09 of the Revised Code or renewed in accordance with 281
division (C) of this section, but it shall not otherwise be 282
altered or amended after it has been executed. A properly executed 283
declaration is not revoked or invalidated by an alteration of or 284
amendment to the declaration. Any alteration of or amendment to 285
the declaration is not a part of the declaration. 286

(C) A declarant may renew a declaration once, extending the 287
validity of the document for an additional three-year period from 288
the date of the renewed execution, by repeating the procedures set 289
forth in section 2135.06 of the Revised Code. A declarant shall 290
not make any changes to any term or provision of the declaration 291
when renewing under this division. 292

Sec. 2135.04. (A) A declaration becomes operative when both 293
of the following apply: 294

(1) The declaration is communicated to a mental health 295

treatment provider of the declarant. 296

(2) The designated physician or a psychiatrist, and one other 297
mental health treatment provider, who examine the declarant 298
determine that the declarant does not have the capacity to consent 299
to mental health treatment decisions. At least one of the two 300
persons who make this determination shall not currently be 301
involved in the declarant's treatment at the time of the 302
determination. If a designated physician is named in the 303
declaration and is not one of the two persons who make this 304
determination, then the psychiatrist who makes the determination 305
in lieu of the designated physician shall make a good faith effort 306
to consult with the designated physician as soon as practicable. 307

(B) A mental health treatment provider for a declarant or a 308
health care facility providing services to a declarant shall make 309
a declaration part of the declarant's medical record and shall 310
note in that record when the declaration is operative. 311

(C) A mental health treatment provider for a declarant or a 312
health care facility providing services to a declarant shall act 313
in accordance with an operative declaration of the declarant 314
consistent with reasonable medical practice, the availability of 315
treatments requested, and applicable law. The mental health 316
treatment provider or the health care facility shall continue to 317
act in accordance with an operative declaration until the 318
declarant has the capacity to consent to mental health treatment 319
decisions. 320

(D) An operative declaration of a declarant supersedes any 321
general consent to treatment form signed by the declarant prior 322
to, upon, or after the declarant's admission to a health care 323
facility to the extent there is a conflict between the declaration 324
and the form, even if the declarant signs the form after the 325
execution of the declaration. To the extent that the provisions of 326
a declarant's declaration and a general consent to treatment form 327
signed by the declarant do not conflict, both documents shall 328
govern the use or continuation, or the withholding or withdrawal, 329
of mental health treatment for the declarant. This division does 330
not apply if a declarant revokes a declaration after the declarant 331
signs a general consent to treatment form. 332

Sec. 2135.05. (A) A declaration may designate an adult to act 333
as a proxy to make decisions about the mental health treatment of 334
the declarant and may designate an adult as an alternate proxy as 335
described in section 2135.02 of the Revised Code. A proxy 336
designated to make decisions about mental health treatment may 337
make decisions about mental health treatment on behalf of the 338
declarant only when the declaration has become operative. The 339
decisions of the proxy regarding the mental health treatment of 340
the declarant must be consistent with desires the declarant has 341
expressed in the declaration. 342

(B) The following persons may not serve as a proxy for a 343
declarant: 344

(1) The declarant's mental health treatment provider, or an 345
employee of the declarant's mental health treatment provider; 346

(2) The owner, operator, or employee of a health care 347
facility in which the declarant is a patient receiving its 348
services or a resident. 349

(C) Divisions (B)(1) and (2) of this section do not apply if 350

the declarant and proxy are related by blood, marriage, or 351
adoption. 352

(D) A proxy may withdraw from a declaration prior to the 353
declaration becoming operative by giving notice to the declarant. 354
If the declaration is operative, a proxy may withdraw by giving 355
written notice to the declarant's mental health treatment provider 356
or the health care facility providing services to the declarant. 357
The mental health treatment provider or the health care facility 358
shall note the withdrawal of a proxy as part of the declarant's 359
medical record. 360

Sec. 2135.06. (A) A declaration for mental health treatment 361
is valid only if it is signed by the declarant, states the date of 362
its execution, and is either witnessed by two adults or 363
acknowledged before a notary public. 364

If a proxy, or a proxy and an alternate proxy, have been 365
designated in the declaration, then each proxy also shall sign the 366
declaration, and the signature of each proxy shall be either 367
witnessed by two adults or acknowledged before a notary public, 368
except that, notwithstanding these requirements, both of the 369
following apply: 370

(1) No declaration shall be invalid or be held invalid 371
because a proxy has not signed the declaration. 372

(2) If a proxy has not signed the declaration, or if the 373
signature of a proxy named in a valid declaration is not either 374
witnessed by two adults or acknowledged before a notary public, 375
then the designation of the proxy is invalid, but the declaration 376
is not invalid because of the absence of a witnessed or 377
acknowledged signature of a proxy. 378

(B) If witnessed for purposes of this section, a declaration 379
shall be witnessed by two individuals as described in this 380

division in whose presence the declarant and each designated proxy 381
signs the declaration. Each witness shall subscribe the witness' 382
signature after the signature of the declarant and, by doing so, 383
attest to the witness' belief that the declarant appears to be of 384
sound mind and not under or subject to duress, fraud, or undue 385
influence. The signatures of the declarant and any proxy under 386
this section and of the witnesses under this division are not 387
required to appear on the same page of the declaration. 388

(C) If acknowledged for purposes of this section, a 389
declaration shall be acknowledged before a notary public, who 390
shall make the certification described in section 147.53 of the 391
Revised Code and also shall attest that the declarant and each 392
designated proxy appear to be of sound mind and not under or 393
subject to duress, fraud, or undue influence. 394

(D) The following may not serve as a witness to the signing 395
of a declarant's declaration: 396

(1) The declarant's mental health treatment provider or a 397
relative or employee of the declarant's mental health treatment 398
provider; 399

(2) The owner, the operator, or a relative or employee of an 400
owner or operator of a health care facility in which the declarant 401
is a patient receiving its services or a resident; 402

(3) A person related to the declarant by blood, marriage, or 403
adoption; 404

(4) A person named as a proxy in the declarant's declaration. 405

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.

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(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.

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(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.

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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.

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(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.

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

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(D) The probate judge of the county in which the declarant is 466
located may revoke a declaration if the judge appoints a guardian 467
for the declarant and specifically orders the revocation of the 468
declaration. 469

Sec. 2135.10. A mental health treatment provider of a 470
declarant, a health care facility providing services to a 471
declarant, or other authorized persons acting under the direction 472
of either a mental health treatment provider of a declarant or a 473
health care facility providing services to a declarant who 474
administer or do not administer mental health treatment according 475
to and in good faith reliance upon the validity of the declarant's 476
declaration are not subject to criminal prosecution, are not 477
liable in tort or other civil damages for injury, death, or loss 478
to person or property, and are not subject to professional 479
disciplinary action resulting from a subsequent finding of a 480
declaration's invalidity. 481

Sec. 2135.11. No person shall require an individual to 482
execute or to refrain from executing a declaration as a criterion 483
for insurance, as a condition for receiving mental health 484
treatment or health care, or as a condition of admission to or 485
discharge from a health care facility. 486

Sec. 2135.12. (A) A declaration executed in accordance with 488
this chapter shall not supersede a valid declaration governing the 489
use or continuation, or the withholding or withdrawal, of 490
life-sustaining treatment executed under Chapter 2133. of the 491
Revised Code. 492

(B) A declaration executed in accordance with this chapter 493
does not revoke a valid durable power of attorney for health care 494
created under Chapter 1337. of the Revised Code, but a declaration 495
so executed shall supersede the designation of an attorney in fact 496

made in a valid health care power of attorney under Chapter 1337. 497
of the Revised Code with respect to the mental health treatment of 498
the declarant. The designation of an attorney in fact in a valid 499
health care power of attorney under Chapter 1337. of the Revised 500
Code shall remain effective in all other respects. 501

Sec. 2135.13. (A) A person who opposes any decision arising 502
under this chapter may make an application opposing the decision 503
to the probate division of the court of common pleas of the county 504
in which the declarant is located or in which the declaration was 505
either witnessed or acknowledged as described in this chapter. 506

(B) If a declarant has not named any proxies in the 507
declaration, or if all the named proxies have withdrawn or are 508
unable or unwilling to act at a time when the declaration has 509
become operative, then the physician who has the primary 510
responsibility for treating the declarant may petition the probate 511
division of the court of common pleas of the county in which the 512
declarant is located to appoint a person to act as a proxy. If the 513
judge of the probate division of the court of common pleas finds 514
it to be in the best interest of the declarant, then the court 515
shall appoint a person to serve as a proxy for the declarant while 516
the declaration is effective. The person so appointed shall be a 517
person who is eligible to serve as a proxy as determined under 518
section 2135.05 of the Revised Code. 519

Sec. 2135.14. A printed form of a declaration may be sold or 520
otherwise distributed in this state for use by adults who are not 521
advised by an attorney. By use of a printed form of that nature, a 522
declarant may consent or refuse to consent to mental health 523
treatment and shall designate a proxy to make mental health 524
treatment decisions in accordance with this chapter. The printed 525
form shall not be used as an instrument for granting any other 526

type of authority or for making any other type of designation, 527
including those declarations that may be made under Chapter 2133. 528
of the Revised Code or designations made under Chapter 1337. of 529
the Revised Code. 530

Section 2. That existing sections 1337.11 and 1337.14 of the 531
Revised Code are hereby repealed. 532