

**As Reported by the House Civil and Commercial Law Committee**

**125th General Assembly**

**Regular Session**

**2003-2004**

**Am. H. B. No. 72**

**Representatives Oelslager, C. Evans, Hartnett, Hollister, Miller, Olman, Seitz,  
Ujvagi, Latta, Book, Harwood, Core, Willamowski, Schlichter, Beatty**

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**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
<del>(F)</del> (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
<del>(G)</del> (H) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.	42 43 44
<del>(H)</del> (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
<del>(I)</del> <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
<del>(J)</del> <u>(K)</u> "Home health agency" has the same meaning as in section <del>3701.88</del> <u>5101.61</u> of the Revised Code.	60 61
<del>(K)</del> <u>(L)</u> "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.	62 63
<del>(L)</del> <u>(M)</u> "Hospital" has the same meanings as in sections 2108.01, 3701.01, and 5122.01 of the Revised Code.	64 65
<del>(M)</del> <u>(N)</u> "Hydration" means fluids that are artificially or technologically administered.	66 67
<del>(N)</del> <u>(O)</u> "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	68 69
<del>(O)</del> <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
<del>(P)</del> <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
<del>(Q)</del> <u>(R)</u> "Medical claim" has the same meaning as in section <del>2305.11</del> <u>2305.113</u> of the Revised Code.	76 77

<u>(S)</u> "Mental health treatment" has the same meaning as in	78
<u>section 2135.01 of the Revised Code.</u>	79
<del>(R)</del> <u>(T)</u> "Nursing home" has the same meaning as in section	80
3721.01 of the Revised Code.	81
<del>(S)</del> <u>(U)</u> "Nutrition" means sustenance that is artificially or	82
technologically administered.	83
<del>(T)</del> <u>(V)</u> "Permanently unconscious state" means a state of	84
permanent unconsciousness in a principal that, to a reasonable	85
degree of medical certainty as determined in accordance with	86
reasonable medical standards by the principal's attending	87
physician and one other physician who has examined the principal,	88
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	91
the principal having no capacity to experience pain or suffering.	92
<del>(U)</del> <u>(W)</u> "Person" has the same meaning as in section 1.59 of	93
the Revised Code and additionally includes political subdivisions	94
and governmental agencies, boards, commissions, departments,	95
institutions, offices, and other instrumentalities.	96
<del>(V)</del> <u>(X)</u> "Physician" means a person who is authorized under	97
Chapter 4731. of the Revised Code to practice medicine and surgery	98
or osteopathic medicine and surgery.	99
<del>(W)</del> <u>(Y)</u> "Political subdivision" and "state" have the same	100
meanings as in section 2744.01 of the Revised Code.	101
<del>(X)</del> <u>(Z)</u> "Professional disciplinary action" means action taken	102
by the board or other entity that regulates the professional	103
conduct of health care personnel, including the state medical	104
board and the board of nursing.	105
<del>(Y)</del> <u>(AA)</u> " <u>Regulated community mental health organization</u> "	106
<u>means a residential facility as defined and licensed under section</u>	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

physician 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
<b><u>Sec. 2135.02. (A) An adult who has the capacity to consent to</u></b>	239
<b><u>mental health treatment decisions voluntarily may execute at any</u></b>	240
<b><u>time a declaration governing the use or continuation, or the</u></b>	241
<b><u>withholding or withdrawal, of mental health treatment. The</u></b>	242
<b><u>declaration shall be signed at the end by the declarant, state the</u></b>	243
<b><u>date of its execution, and either be witnessed or be acknowledged</u></b>	244
<b><u>in accordance with section 2135.06 of the Revised Code. The</u></b>	245
<b><u>declaration may include a designation by the declarant of a person</u></b>	246
<b><u>to act as a proxy to make decisions regarding mental health</u></b>	247
<b><u>treatment pursuant to the declaration, and, if the declaration</u></b>	248
<b><u>includes a designation of a proxy, the declaration shall be signed</u></b>	249
<b><u>at the end by the designated proxy. The declarant may also</u></b>	250
<b><u>specifically designate in the declaration an alternate proxy to</u></b>	251
<b><u>act in that role if the original proxy is unable or unwilling to</u></b>	252
<b><u>act at any time, and, if the declaration includes a designation of</u></b>	253
<b><u>an alternate proxy, the declaration shall be signed at the end by</u></b>	254
<b><u>the designated alternate proxy. The declarant may name in the</u></b>	255
<b><u>declaration a physician and assign the physician the primary</u></b>	256
<b><u>responsibility for the declarant's mental health treatment. The</u></b>	257

declaration may include a specific authorization for the use or 258  
continuation, or the withholding or withdrawal, of mental health 259  
treatment. 260

(B) A mental health treatment provider or a health care 261  
facility providing services to a declarant shall continue to 262  
obtain the declarant's informed consent to all mental health 263  
treatment decisions if the declarant has the capacity to consent 264  
to mental health treatment decisions. 265

**Sec. 2135.03.** (A) Except as otherwise provided in this 266  
division and subject to division (C) of this section, a 267  
declaration for mental health treatment remains valid and 268  
effective for three years after its execution unless it is 269  
properly revoked. A declaration for mental health treatment may 270  
become operative as provided in section 2135.04 of the Revised 271  
Code. If the declaration becomes operative, the authority of a 272  
proxy named in the declaration continues in effect as long as the 273  
declaration designating the proxy is in effect or until the proxy 274  
has withdrawn. If a declaration for mental health treatment has 275  
become operative and is in effect at the expiration of three years 276  
after its execution, the declaration remains effective until the 277  
declarant has the capacity to consent to mental health treatment 278  
decisions. If a declaration for mental health treatment has not 279  
become operative at the expiration of three years after its 280  
execution, the declaration may be renewed as provided in division 281  
(C)(1) of this section or remains effective as provided in 282  
division (C)(2) of this section. 283

(B) A valid declaration may be revoked in accordance with 284  
section 2135.09 of the Revised Code or renewed in accordance with 285  
division (C) (1) of this section, but it shall not otherwise be 286  
altered or amended after it has been executed. A properly executed 287

declaration is not revoked or invalidated by an alteration of or 288  
amendment to the declaration. Any alteration of or amendment to 289  
the declaration is not a part of the declaration. 290

(C) (1) A declarant may renew a declaration once, extending 291  
the validity of the document for an additional three-year period 292  
from the date of the renewal, by repeating the procedures set 293  
forth in section 2135.06 of the Revised Code, if the declarant has 294  
included in the declaration a specific authorization for the use 295  
or continuation, or the withholding or withdrawal, of mental 296  
health treatment, and the declarant makes no change with respect 297  
to that authorization. A declarant shall not make any changes to 298  
any term or provision of the declaration when renewing under 299  
division (C)(1) of this section. 300

(2) A declaration for mental health treatment that has not 301  
become operative at the expiration of three years after its 302  
execution remains effective if both of the following apply: 303

(a) The declaration designates a proxy or an alternate proxy. 304

(b) The declarant does not include in the declaration a 305  
specific authorization for the use or continuation, or the 306  
withholding or withdrawal, of mental health treatment. 307

**Sec. 2135.04.** (A) A declaration becomes operative when both 309  
of the following apply: 310

(1) The declaration is communicated to a mental health 311  
treatment provider of the declarant. 312

(2) The designated physician or a psychiatrist, and one other 313  
mental health treatment provider, who examine the declarant 314  
determine that the declarant does not have the capacity to consent 315  
to mental health treatment decisions. At least one of the two 316  
persons who make this determination shall not currently be 317

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.

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(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.

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(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.

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(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.

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Sec. 2135.05. (A) A declaration may designate an adult to act 349  
as a proxy to make decisions about the mental health treatment of 350  
the declarant and may designate an adult as an alternate proxy as 351  
described in section 2135.02 of the Revised Code. A proxy 352  
designated to make decisions about mental health treatment may 353  
make decisions about mental health treatment on behalf of the 354  
declarant only when the declaration has become operative. The 355  
decisions of the proxy regarding the mental health treatment of 356  
the declarant must be consistent with desires the declarant has 357  
expressed in the declaration. 358

(B) The following persons may not serve as a proxy for a 359  
declarant: 360

(1) The declarant's mental health treatment provider, or an 361  
employee of the declarant's mental health treatment provider; 362

(2) The owner, operator, or employee of a health care 363  
facility in which the declarant is a patient receiving its 364  
services or a resident. 365

(C) Divisions (B)(1) and (2) of this section do not apply if 366  
the declarant and proxy are related by blood, marriage, or 367  
adoption. 368

(D) A proxy may withdraw from a declaration prior to the 369  
declaration becoming operative by giving notice to the declarant. 370  
If the declaration is operative, a proxy may withdraw by giving 371  
written notice to the declarant's mental health treatment provider 372  
or the health care facility providing services to the declarant. 373  
The mental health treatment provider or the health care facility 374  
shall note the withdrawal of a proxy as part of the declarant's 375  
medical record. 376

Sec. 2135.06. (A) A declaration for mental health treatment 377  
is valid only if it is signed by the declarant, states the date of 378

its execution, and is either witnessed by two adults or 379  
acknowledged before a notary public. 380

If a proxy, or a proxy and an alternate proxy, have been 381  
designated in the declaration, then each proxy also shall sign the 382  
declaration, and the signature of each proxy shall be either 383  
witnessed by two adults or acknowledged before a notary public, 384  
except that, notwithstanding these requirements, both of the 385  
following apply: 386

(1) No declaration shall be invalid or be held invalid 387  
because a proxy has not signed the declaration. 388

(2) If a proxy has not signed the declaration, or if the 389  
signature of a proxy named in a valid declaration is not either 390  
witnessed by two adults or acknowledged before a notary public, 391  
then the designation of the proxy is invalid, but the declaration 392  
is not invalid because of the absence of a witnessed or 393  
acknowledged signature of a proxy. 394

(B) If witnessed for purposes of this section, a declaration 395  
shall be witnessed by two individuals as described in this 396  
division in whose presence the declarant and each designated proxy 397  
signs the declaration. Each witness shall subscribe the witness' 398  
signature after the signature of the declarant and, by doing so, 399  
attest to the witness' belief that the declarant appears to be of 400  
sound mind and not under or subject to duress, fraud, or undue 401  
influence. The signatures of the declarant and any proxy under 402  
this section and of the witnesses under this division are not 403  
required to appear on the same page of the declaration. 404

(C) If acknowledged for purposes of this section, a 405  
declaration shall be acknowledged before a notary public, who 406  
shall make the certification described in section 147.53 of the 407  
Revised Code and also shall attest that the declarant and each 408

designated proxy appear to be of sound mind and not under or 409  
subject to duress, fraud, or undue influence. 410

(D) The following may not serve as a witness to the signing 411  
of a declarant's declaration: 412

(1) The declarant's mental health treatment provider or a 413  
relative or employee of the declarant's mental health treatment 414  
provider; 415

(2) The owner, the operator, or a relative or employee of an 416  
owner or operator of a health care facility in which the declarant 417  
is a patient receiving its services or a resident; 418

(3) A person related to the declarant by blood, marriage, or 419  
adoption; 420

(4) A person named as a proxy in the declarant's declaration. 421

**Sec. 2135.07.** (A) If a mental health treatment provider of a 422  
declarant or a health care facility providing services to a 423  
declarant is unwilling at any time to comply with the declarant's 424  
declaration, the mental health treatment provider or health care 425  
facility promptly shall notify the declarant and any proxy and 426  
document the notification in the declarant's medical record. The 427  
mental health treatment provider or health care facility that is 428  
unwilling to comply with the declarant's declaration shall not 429  
prevent or attempt to prevent, or unreasonably delay or attempt to 430  
unreasonably delay, the transfer of the declarant to the care of a 431  
mental health treatment provider or a health care facility that is 432  
willing and able to comply or allow compliance with the 433  
declarant's declaration. 434

(B) The mental health treatment provider of a declarant or a 435  
health care facility providing services to a declarant may subject 436  
the declarant to treatment in a manner contrary to the declarant's 437  
expressed wishes only if either of the following applies: 438

(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. 439  
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(2) An emergency situation endangers the life or health of the declarant or others. 444  
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**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. 446  
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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. 455  
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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. 461  
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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. 465  
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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 located may revoke a declaration if the judge appoints a guardian for the declarant and specifically orders the revocation of the declaration.

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**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.

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Sec. 2135.11. No person shall require an individual to 498  
execute or to refrain from executing a declaration as a criterion 499  
for insurance, as a condition for receiving mental health 500  
treatment or health care, or as a condition of admission to or 501  
discharge from a health care facility. 502

Sec. 2135.12. (A) A declaration executed in accordance with 504  
this chapter shall not supersede a valid declaration governing the 505  
use or continuation, or the withholding or withdrawal, of 506  
life-sustaining treatment executed under Chapter 2133. of the 507  
Revised Code. 508

(B) A declaration executed in accordance with this chapter 509  
does not revoke a valid durable power of attorney for health care 510  
created under Chapter 1337. of the Revised Code, but a declaration 511  
so executed shall supersede the designation of an attorney in fact 512  
made in a valid health care power of attorney under Chapter 1337. 513  
of the Revised Code with respect to the mental health treatment of 514  
the declarant. The designation of an attorney in fact in a valid 515  
health care power of attorney under Chapter 1337. of the Revised 516  
Code shall remain effective in all other respects. 517

Sec. 2135.13. (A) A person who opposes any decision arising 518  
under this chapter may make an application opposing the decision 519  
to the probate division of the court of common pleas of the county 520  
in which the declarant is located or in which the declaration was 521  
either witnessed or acknowledged as described in this chapter. 522

(B) If a declarant has not named any proxies in the 523  
declaration, or if all the named proxies have withdrawn or are 524  
unable or unwilling to act at a time when the declaration has 525  
become operative, then the physician who has the primary 526  
responsibility for treating the declarant may petition the probate 527  
division of the court of common pleas of the county in which the 528

declarant is located to appoint a person to act as a proxy. If the 529  
judge of the probate division of the court of common pleas finds 530  
it to be in the best interest of the declarant, then the court 531  
shall appoint a person to serve as a proxy for the declarant while 532  
the declaration is effective. The person so appointed shall be a 533  
person who is eligible to serve as a proxy as determined under 534  
section 2135.05 of the Revised Code. 535

Sec. 2135.14. A printed form of a declaration may be sold or 536  
otherwise distributed in this state for use by adults who are not 537  
advised by an attorney. By use of a printed form of that nature, a 538  
declarant may consent or refuse to consent to mental health 539  
treatment and shall designate a proxy to make mental health 540  
treatment decisions in accordance with this chapter. The printed 541  
form shall not be used as an instrument for granting any other 542  
type of authority or for making any other type of designation, 543  
including those declarations that may be made under Chapter 2133. 544  
of the Revised Code or designations made under Chapter 1337. of 545  
the Revised Code. 546

**Section 2.** That existing sections 1337.11 and 1337.14 of the 547  
Revised Code are hereby repealed. 548