

As Introduced

**130th General Assembly
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H. B. No. 126

Representatives Kunze, Stinziano

Cosponsor: Representative Wachtmann

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A B I L L

To amend sections 1337.12, 1337.13, and 2133.04 of
the Revised Code to allow a person who creates a
durable power of attorney for health care to
authorize the attorney in fact to obtain health
information about the person, to make an
individual who is designated as an alternate
attorney in fact ineligible to witness the
instrument that creates a durable power of
attorney for health care, to permit the principal
to nominate a guardian in a durable power of
attorney for health care, and to establish a
presumption that a valid living will declaration
revokes all prior declarations.

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

Section 1. That sections 1337.12, 1337.13, and 2133.04 of the
Revised Code be amended to read as follows:

Sec. 1337.12. (A)(1) An adult who is of sound mind
voluntarily may create a valid durable power of attorney for
health care by executing a durable power of attorney, in
accordance with section 1337.24 of the Revised Code, that

authorizes an attorney in fact as described in division (A)(2) of 20
this section to make health care decisions for the principal at 21
any time that the attending physician of the principal determines 22
that the principal has lost the capacity to make informed health 23
care decisions for the principal. The durable power of attorney 24
for health care may authorize the attorney in fact, commencing 25
immediately upon the execution of the instrument or at any 26
subsequent time and regardless of whether the principal has lost 27
the capacity to make informed health care decisions, to obtain 28
information concerning the principal's health, including protected 29
health information as defined in 45 C.F.R. 160.103. Except as 30
otherwise provided in divisions (B) to (F) of section 1337.13 of 31
the Revised Code, the authorization may include the right to give 32
informed consent, to refuse to give informed consent, or to 33
withdraw informed consent to any health care that is being or 34
could be provided to the principal. Additionally, to be valid, a 35
durable power of attorney for health care shall satisfy both of 36
the following: 37

(a) It shall be signed at the end of the instrument by the 38
principal and shall state the date of its execution. 39

(b) It shall be witnessed in accordance with division (B) of 40
this section or be acknowledged by the principal in accordance 41
with division (C) of this section. 42

(2) Except as otherwise provided in this division, a durable 43
power of attorney for health care may designate any competent 44
adult as the attorney in fact. The attending physician of the 45
principal and an administrator of any nursing home in which the 46
principal is receiving care shall not be designated as an attorney 47
in fact in, or act as an attorney in fact pursuant to, a durable 48
power of attorney for health care. An employee or agent of the 49
attending physician of the principal and an employee or agent of 50

any health care facility in which the principal is being treated 51
shall not be designated as an attorney in fact in, or act as an 52
attorney in fact pursuant to, a durable power of attorney for 53
health care, except that these limitations do not preclude a 54
principal from designating either type of employee or agent as the 55
principal's attorney in fact if the individual is a competent 56
adult and related to the principal by blood, marriage, or 57
adoption, or if the individual is a competent adult and the 58
principal and the individual are members of the same religious 59
order. 60

(3) A durable power of attorney for health care shall not 61
expire, unless the principal specifies an expiration date in the 62
instrument. However, when a durable power of attorney contains an 63
expiration date, if the principal lacks the capacity to make 64
informed health care decisions for the principal on the expiration 65
date, the instrument shall continue in effect until the principal 66
regains the capacity to make informed health care decisions for 67
the principal. 68

(B) If witnessed for purposes of division (A)(1)(b) of this 69
section, a durable power of attorney for health care shall be 70
witnessed by at least two individuals who are adults and who are 71
not ineligible to be witnesses under this division. Any person who 72
is related to the principal by blood, marriage, or adoption, any 73
person who is designated as the attorney in fact or alternate 74
attorney in fact in the instrument, the attending physician of the 75
principal, and the administrator of any nursing home in which the 76
principal is receiving care are ineligible to be witnesses. 77

The witnessing of a durable power of attorney for health care 78
shall involve the principal signing, or acknowledging the 79
principal's signature, at the end of the instrument in the 80
presence of each witness. Then, each witness shall subscribe the 81
witness's signature after the signature of the principal and, by 82

doing so, attest to the witness's belief that the principal 83
appears to be of sound mind and not under or subject to duress, 84
fraud, or undue influence. The signatures of the principal and the 85
witnesses under this division are not required to appear on the 86
same page of the instrument. 87

(C) If acknowledged for purposes of division (A)(1)(b) of 88
this section, a durable power of attorney for health care shall be 89
acknowledged before a notary public, who shall make the 90
certification described in section 147.53 of the Revised Code and 91
also shall attest that the principal appears to be of sound mind 92
and not under or subject to duress, fraud, or undue influence. 93

(D)(1) If a principal has both a valid durable power of 94
attorney for health care and a valid declaration, division (B) of 95
section 2133.03 of the Revised Code applies. If a principal has 96
both a valid durable power of attorney for health care and a DNR 97
identification that is based upon a valid declaration and if the 98
declaration supersedes the durable power of attorney for health 99
care under division (B) of section 2133.03 of the Revised Code, 100
the DNR identification supersedes the durable power of attorney 101
for health care to the extent of any conflict between the two. A 102
valid durable power of attorney for health care supersedes any DNR 103
identification that is based upon a do-not-resuscitate order that 104
a physician issued for the principal which is inconsistent with 105
the durable power of attorney for health care or a valid decision 106
by the attorney in fact under a durable power of attorney. 107

(2) As used in division (D) of this section: 108

(a) "Declaration" has the same meaning as in section 2133.01 109
of the Revised Code. 110

(b) "Do-not-resuscitate order" and "DNR identification" have 111
the same meanings as in section 2133.21 of the Revised Code. 112

(E)(1) In a durable power of attorney for health care, a 113

principal may nominate a guardian of the principal's person, 114
estate, or both for consideration by a court if proceedings for 115
the appointment of a guardian for the principal's person, estate, 116
or both are commenced at a later time. The principal may authorize 117
the person nominated as the guardian or the attorney in fact to 118
nominate a successor guardian for consideration by the court. 119
Except for good cause shown or disqualification, the court shall 120
make its appointment in accordance with the principal's most 121
recent nomination. 122

(2) The principal may direct that bond be waived for a person 123
nominated as guardian or successor guardian under division (E)(1) 124
of this section. 125

(3) A durable power of attorney that contains the nomination 126
of a person to be the guardian of the person, estate, or both of 127
the principal may be filed with the probate court for safekeeping, 128
and the probate court shall designate the nomination as the 129
nomination of a standby guardian. 130

(4) If a guardian is appointed for the principal, a durable 131
power of attorney is not terminated, and the authority of the 132
attorney in fact continues unless the court, pursuant to its 133
authority under section 2111.50 of the Revised Code, limits, 134
suspends, or terminates the power of attorney after notice to the 135
attorney in fact and upon a finding that the limitation, 136
suspension, or termination is in the best interest of the 137
principal. 138

Sec. 1337.13. (A)(1) An attorney in fact under a durable 139
power of attorney for health care shall make health care decisions 140
for the principal only if the instrument substantially complies 141
with section 1337.12 of the Revised Code and specifically 142
authorizes the attorney in fact to make health care decisions for 143
the principal, and only if the attending physician of the 144

principal determines that the principal has lost the capacity to 145
make informed health care decisions for the principal. If 146
authorized in the instrument, the attorney in fact, commencing 147
immediately upon the execution of the instrument or at any 148
subsequent time specified in the instrument and regardless of 149
whether the principal has lost the capacity to make informed 150
health care decisions, may obtain information concerning the 151
principal's health, including protected health information as 152
defined in 45 C.F.R. 160.103. Except as otherwise provided in 153
divisions (B) to (F) of this section and subject to any specific 154
limitations in the instrument, the attorney in fact may make 155
health care decisions for the principal to the same extent as the 156
principal could make those decisions for the principal if the 157
principal had the capacity to do so. Except as otherwise provided 158
in divisions (B) to (F) of this section, in exercising that 159
authority, the attorney in fact shall act consistently with the 160
desires of the principal or, if the desires of the principal are 161
unknown, shall act in the best interest of the principal. 162

(2) This section does not affect, and shall not be construed 163
as affecting, any right that the person designated as attorney in 164
fact in a durable power of attorney for health care may have, 165
apart from the instrument, to make or participate in the making of 166
health care decisions on behalf of the principal. 167

(3) Unless the right is limited in a durable power of 168
attorney for health care, when acting pursuant to the instrument, 169
the attorney in fact has the same right as the principal to 170
receive information about proposed health care, to review health 171
care records, and to consent to the disclosure of health care 172
records. 173

(B)(1) An attorney in fact under a durable power of attorney 174
for health care does not have authority, on behalf of the 175

principal, to refuse or withdraw informed consent to 176
life-sustaining treatment, unless the principal is in a terminal 177
condition or in a permanently unconscious state and unless the 178
applicable requirements of divisions (B)(2) and (3) of this 179
section are satisfied. 180

(2) In order for an attorney in fact to refuse or withdraw 181
informed consent to life-sustaining treatment for a principal who 182
is in a permanently unconscious state, the consulting physician 183
associated with the determination that the principal is in the 184
permanently unconscious state shall be a physician who, by virtue 185
of advanced education or training, of a practice limited to 186
particular diseases, illnesses, injuries, therapies, or branches 187
of medicine and surgery or osteopathic medicine and surgery, of 188
certification as a specialist in a particular branch of medicine 189
or surgery or osteopathic medicine and surgery, or of experience 190
acquired in the practice of medicine and surgery or osteopathic 191
medicine and surgery, is qualified to determine whether the 192
principal is in a permanently unconscious state. 193

(3) In order for an attorney in fact to refuse or withdraw 194
informed consent to life-sustaining treatment for a principal who 195
is in a terminal condition or in a permanently unconscious state, 196
the attending physician of the principal shall determine, in good 197
faith, to a reasonable degree of medical certainty, and in 198
accordance with reasonable medical standards, that there is no 199
reasonable possibility that the principal will regain the capacity 200
to make informed health care decisions for the principal. 201

(C) Except as otherwise provided in this division, an 202
attorney in fact under a durable power of attorney for health care 203
does not have authority, on behalf of the principal, to refuse or 204
withdraw informed consent to health care necessary to provide 205
comfort care. This division does not preclude, and shall not be 206
construed as precluding, an attorney in fact under a durable power 207

of attorney for health care from refusing or withdrawing informed 208
consent to the provision of nutrition or hydration to the 209
principal if, under the circumstances described in division (E) of 210
this section, the attorney in fact would not be prohibited from 211
refusing or withdrawing informed consent to the provision of 212
nutrition or hydration to the principal. 213

(D) An attorney in fact under a durable power of attorney for 214
health care does not have authority to refuse or withdraw informed 215
consent to health care for a principal who is pregnant if the 216
refusal or withdrawal of the health care would terminate the 217
pregnancy, unless the pregnancy or the health care would pose a 218
substantial risk to the life of the principal, or unless the 219
principal's attending physician and at least one other physician 220
who has examined the principal determine, to a reasonable degree 221
of medical certainty and in accordance with reasonable medical 222
standards, that the fetus would not be born alive. 223

(E) An attorney in fact under a durable power of attorney for 224
health care does not have authority to refuse or withdraw informed 225
consent to the provision of nutrition or hydration to the 226
principal, unless the principal is in a terminal condition or in a 227
permanently unconscious state and unless the following apply: 228

(1) The principal's attending physician and at least one 229
other physician who has examined the principal determine, to a 230
reasonable degree of medical certainty and in accordance with 231
reasonable medical standards, that nutrition or hydration will not 232
or no longer will serve to provide comfort to, or alleviate pain 233
of, the principal. 234

(2) If the principal is in a permanently unconscious state, 235
the principal has authorized the attorney in fact to refuse or 236
withdraw informed consent to the provision of nutrition or 237
hydration to the principal when the principal is in a permanently 238
unconscious state by doing both of the following in the durable 239

power of attorney for health care:	240
(a) Including a statement in capital letters or other	241
conspicuous type, including, but not limited to, a different font,	242
bigger type, or boldface type, that the attorney in fact may	243
refuse or withdraw informed consent to the provision of nutrition	244
or hydration to the principal if the principal is in a permanently	245
unconscious state and if the determination described in division	246
(E)(1) of this section is made, or checking or otherwise marking a	247
box or line that is adjacent to a similar statement on a printed	248
form of a durable power of attorney for health care;	249
(b) Placing the principal's initials or signature underneath	250
or adjacent to the statement, check, or other mark described in	251
division (E)(2)(a) of this section.	252
(3) If the principal is in a permanently unconscious state,	253
the principal's attending physician determines, in good faith,	254
that the principal authorized the attorney in fact to refuse or	255
withdraw informed consent to the provision of nutrition or	256
hydration to the principal when the principal is in a permanently	257
unconscious state by complying with the requirements of divisions	258
(E)(2)(a) and (b) of this section.	259
(F) An attorney in fact under a durable power of attorney for	260
health care does not have authority to withdraw informed consent	261
to any health care to which the principal previously consented,	262
unless at least one of the following applies:	263
(1) A change in the physical condition of the principal has	264
significantly decreased the benefit of that health care to the	265
principal.	266
(2) The health care is not, or is no longer, significantly	267
effective in achieving the purposes for which the principal	268
consented to its use.	269

Sec. 2133.04. (A) A declarant may revoke a declaration at any 270
time and in any manner. The revocation shall be effective when the 271
declarant expresses an intention to revoke the declaration, except 272
that, if the declarant made the declarant's attending physician 273
aware of the declaration, the revocation shall be effective upon 274
its communication to the attending physician of the declarant by 275
the declarant, a witness to the revocation, or other health care 276
personnel to whom the revocation is communicated by that witness. 277
Absent actual knowledge to the contrary, the attending physician 278
of a declarant and other health care personnel who are informed of 279
the revocation of a declaration by an alleged witness may rely on 280
the information and act in accordance with the revocation. 281

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(B) Upon the communication as described in division (A) of 283
this section to the attending physician of a declarant of the fact 284
that the declaration has been revoked, the attending physician or 285
other health care personnel acting under the direction of the 286
attending physician shall make the fact a part of the declarant's 287
medical record. 288

(C) Unless a declaration provides otherwise, a declaration is 289
revoked by a subsequent declaration. 290

Section 2. That existing sections 1337.12, 1337.13, and 291
2133.04 of the Revised Code are hereby repealed. 292