

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

- (A) "Adult" means either a person who is eighteen years of age or older or an emancipated minor.
- (B) "Attending physician" means the physician to whom a declarant or the family of a declarant has assigned primary responsibility for the treatment or care of the declarant or, if the responsibility has not been assigned, the physician who has accepted that responsibility.
- (C) "Capacity to consent to mental health treatment decisions" means the ability to understand the material risks and benefits of the proposed mental health care or treatment, the ability to reach a decision regarding the mental health care or treatment, the ability to communicate that decision, and the absence of any patently false beliefs concerning the nature and consequences of a decision, including the benefits and risks of and alternatives to any proposed mental health care.
- (D) "Declarant" means an adult who has executed a declaration for mental health treatment in accordance with Chapter 2135. of the Revised Code.
- (E) "Declaration for mental health treatment" or "declaration" means a written document declaring preferences or instructions regarding mental health treatment executed in accordance with Chapter 2135. 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.
- (G) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical condition.
- (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) "Mental health treatment" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's mental condition, 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.

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

(M) "Mental health treatment provider" means physicians, physician assistants, psychologists, nurses, licensed independent social workers, licensed professional clinical counselors, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.

(N) "Patently false belief" is a belief for which no evidence exists and that no rational person would believe.

(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, board of psychology, and the 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) "Psychiatrist" has the same meaning as in section 5122.01 of the Revised Code.

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

(T) "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 and each proxy, 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 shall 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. 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. 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 shall continue to obtain a declarant's informed consent to all mental health treatment decisions if the declarant is capable of providing informed consent.

Sec. 2135.03.

(A) A declaration for mental health treatment remains valid and may become operative for three years after its execution unless it is properly revoked. 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 expires.

(B) A valid declaration may be revoked in accordance with section 2135.09 of the Revised Code or renewed in accordance with division (C) of this section, but it may 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) A declarant may renew a declaration once and extend the validity of the document for an additional three-year period from the date of the renewed execution by repeating the procedures set forth in section 2135.06 of the Revised Code. A declarant shall not make any changes to either the designation by the declarant of a proxy or to any 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 attending 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.

(B) A mental health treatment provider for 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 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 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 shall designate an adult to act as a proxy to make decisions about the mental health treatment of the declarant. 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 or 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 or are members of the same religious order.

(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, the proxy may withdraw by giving written notice to the declarant's mental health treatment provider. The mental health treatment provider shall note the withdrawal of the 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 and each proxy, states the date of its execution, and is either witnessed by two adults or acknowledged before a notary public.

(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 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 have the capacity to consent to mental health treatment decisions and is not under duress or undue influence or subject to fraud. The signatures of the declarant and each 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 appears to have the capacity to consent to mental health treatment decisions and is not under duress or undue influence or subject to fraud.

(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 or 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 or health care facility of a declarant is unwilling at any time to comply with the declarant's declaration, the mental health treatment provider or health care facility shall promptly notify the declarant and the 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 may subject the declarant to treatment in a manner contrary to the declarant's expressed wishes only if either of the following apply:

(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. If the declaration is operative, then the declarant may revoke the declaration after the attending 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 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 who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of the declarant's declaration is not subject to criminal prosecution, is not liable in tort or other civil damages for injury, death, or loss to person or property, and is 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 or discharge from a health care facility.

Sec. 2135.12.

(A) A declaration executed in accordance with Chapter 2135. of the Revised Code shall not supercede 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 shall supercede 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 person who opposes any decision rising 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.

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 shall 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 section 1337.11 and 1337.17 of the Revised Code are hereby repealed.