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Bill Analysis
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BILL SUMMARY

- Enacts a new body of law pursuant to which adults who have the capacity to consent to mental health treatment decisions voluntarily may execute a declaration governing the use or continuation, or the withholding or withdrawal, of mental health treatment for the declarant (a "declaration for mental health treatment"), authorizes the designation in such a declaration of a "proxy" to make decisions in specified circumstances about the declarant's mental health treatment, prescribes the requirements for the validity and revocation of a declaration for mental health treatment, specifies circumstances in which such a declaration becomes operative, specifies the effect of such a declaration, and specifies the rights, duties, and general immunity from liability of a person designated as a proxy under such a declaration.
- Modifies the definition of "health care" that applies to the law governing durable powers of attorney for health care (HCPOAs) so that it means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition or physical or mental health,

* *This analysis was prepared before the report of the Senate Judiciary on Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

and adopts the same definition for purposes of the bill's provisions regarding a declaration for mental health treatment.

- Specifies that a declaration for mental health treatment executed in accordance with its provisions: (1) does not supersede a valid declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment executed under existing R.C. Chapter 2133. ("living wills"), (2) supersedes the designation of an attorney in fact made in a valid durable HCPOA under R.C. Chapter 1337. with respect to the mental health treatment of the declarant and the designation of a proxy to make mental health treatment decisions, and (3) does not revoke a valid durable HCPOA created under R.C. Chapter 1337. and, except as provided in clause (2) of this paragraph, does not affect the designation of an attorney in fact made in the durable HCPOA for all other purposes.

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CONTENT AND OPERATION

Declarations for mental health treatment

In general

The bill enacts a new body of law pursuant to which specified persons may execute a "declaration for mental health treatment." Existing law does not contain any comparable provisions, although existing law does contain provisions regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment (existing R.C. Chapter 2133.--not in the bill) and provisions regarding the execution of durable health care powers of attorney (existing R.C. 1337.11 to 1337.17). The latter provisions pertain, in part, to the designated attorney in fact's making of certain "health care decisions" regarding the principal in specified circumstances. As used in those latter provisions, "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's *physical or mental condition* (existing R.C. 1337.11(F)).

Execution of declaration, duration of validity, renewal, and general effect

The bill provides that an "adult" who has the "capacity to consent to mental health treatment decisions" voluntarily may execute at any time a "declaration" (also referred to as a "declaration for mental health treatment") governing the use or continuation, or the withholding or withdrawal, of "mental health treatment." The declaration must be signed at the end by the "declarant," state the date of its execution, and either be witnessed or be acknowledged in accordance with the procedures set forth in the bill regarding a declaration being valid (see "Validity of declaration," below). 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 (see "Designation of proxy," below), and, if it includes such a designation, it must 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 such a designation, it must 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 (if a physician is so named, the physician is the "designated physician" under the bill). The declaration may include a specific authorization for the use or continuation, or the withholding or withdrawal, of mental health treatment. (See "Definitions," below, regarding terms and phrases above that are in quotation marks.) (R.C. 2135.02(A).)

Generally, a "declaration for mental health treatment" remains valid (see "Validity of declaration," below) and effective for three years after its execution unless it is properly revoked. It may become operative as described in "Declaration becoming operative," below. If the declaration becomes operative, the authority of a proxy named in the declaration continues in effect as long as the declaration designating the proxy is in effect or until the proxy has withdrawn. If a declaration for mental health treatment has become operative and is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant has the capacity to consent to mental health treatment decisions. If a declaration for mental health treatment has not become operative at the expiration of three years after its execution, the declaration may be renewed as described in the following paragraph or remains effective as described in the second following paragraph. (R.C. 2135.03(A).)

A valid declaration may be revoked in accordance with procedures set forth in the bill (see "Revocation of declaration," below) or renewed as described in this paragraph, but it cannot 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. A declarant may renew a declaration once, extending the validity of the document for an additional three-year period from the date of the renewal, by repeating the procedures set forth in the bill regarding a declaration being valid (see "Validity of declaration," below), if the declarant has included in the declaration a specific authorization for the use or continuation, or the withholding or withdrawal, of mental health treatment, and the declarant makes no change with respect to that authorization. A declarant may not make any changes to any term or provision of the declaration when renewing under this provision. (R.C. 2135.03(B) and (C)(1).)

A declaration for mental health treatment that has not become operative at the expiration of three years after its execution remains effective if: (1) the declaration designates a proxy or an alternate proxy and (2) the declarant does not include in the declaration a specific authorization for the use or continuation, or the withholding or withdrawal, of mental health treatment (R.C. 2135.03(C)(2)).

Designation of proxy

A declaration for mental health treatment may designate an adult to act as a proxy to make decisions about the mental health treatment of the declarant and may designate an adult as an alternate proxy as described above in "Execution of declaration, duration of validity, renewal, and general effect." 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 (see "Declaration becoming operative," below). The

decisions of the proxy regarding the mental health treatment of the declarant must be consistent with desires the declarant expressed in the declaration.

The declarant's "mental health treatment provider," an employee of the declarant's mental health treatment provider, or the owner, operator, or employee of a "health care facility" in which the declarant is a patient receiving its services or a resident may not serve as a proxy for a declarant (see "Definitions," below, regarding the terms and phrases in quotation marks). These restrictions do not apply, though, if the declarant and proxy are related by blood, marriage, or adoption.

A proxy may withdraw from a declaration prior to the declaration becoming operative by giving notice to the declarant. If the declaration is operative, a proxy may withdraw by giving written notice to the declarant's mental health treatment provider or the health care facility providing services to the declarant. The provider or the facility must note the withdrawal of a proxy as part of the declarant's medical record. (R.C. 2135.05.)

Validity of declaration

A declaration for mental health treatment is valid only if it is signed by the declarant, states the date of its execution, and is either witnessed by two adults or acknowledged before a notary public. If a proxy, or a proxy and an alternate proxy, have been designated in the declaration, then each proxy also must sign the declaration, and the signature of each proxy must be either witnessed by two adults or acknowledged before a notary public. Notwithstanding these requirements, both of the following apply: (1) no declaration is invalid or can be held invalid because a proxy has not signed the declaration, and (2) if a proxy has not signed the declaration, or if the signature of a proxy named in a valid declaration is not either witnessed by two adults or acknowledged before a notary public, then the designation of the proxy is invalid, but the declaration is not invalid because of the absence of a witnessed or acknowledged signature of a proxy.

If a declaration is witnessed for the above-described purposes: (1) it must be witnessed by two individuals who are adults and in whose presence the declarant and each designated proxy signs the declaration, (2) each witness must subscribe the witness' signature after the signature of the declarant and, by doing so, attest to the witness' belief that the declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence, and (3) the signatures of the declarant and any proxy and of the witnesses are not required to appear on the same page of the declaration. If a declaration is acknowledged for the above-described purposes, it must be acknowledged before a notary public. The notary public must make the certification described in existing R.C. 147.53 (contents of

acknowledgements, not in the bill) and also must attest that the declarant and each designated proxy appear to be of sound mind and not under or subject to duress, fraud, or undue influence.

The bill provides that none of the following may 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 that provider, (2) the owner, the operator, or a relative or employee of an owner or operator of a health care facility in which the declarant is a patient receiving its services or a resident, (3) a person related to the declarant by blood, marriage, or adoption, or (4) a person named as a proxy in the declarant's declaration. (R.C. 2135.06.)

Declaration becoming operative

The bill specifies that a mental health treatment provider or a health care facility providing services to a declarant must continue to obtain a declarant's informed consent to all "mental health treatment decisions" (see "**Definitions**," below) if the declarant has the capacity to consent to mental health treatment decisions (R.C. 2135.02(B)).

A declaration becomes operative when both: (1) the declaration is communicated to a mental health treatment provider of the declarant, and (2) the "designated physician" or a "psychiatrist" (see "**Definitions**," below), and one other mental health treatment provider, who examine the declarant determine that the declarant does not have the capacity to consent to mental health treatment decisions. At least one of the two persons who make this determination cannot currently be involved in the declarant's treatment at the time of the determination. If a designated physician is named in the declaration and is not one of the two persons who make this determination, then the psychiatrist who makes the determination in lieu of the designated physician must make a good faith effort to consult with the designated physician as soon as practicable. A mental health treatment provider for a declarant or a health care facility providing services to a declarant must make a declaration part of the declarant's "medical record" (see "**Definitions**," below), and must note in that record when the declaration is operative.

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

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 govern the use or continuation, or the withholding or withdrawal, of mental health treatment for the declarant. The bill specifies that the provisions described in this paragraph do not apply if a declarant revokes a declaration after the declarant signs a general consent to treatment form. (R.C. 2135.04.)

Provider or facility unwilling to comply with declaration; provision of treatment contrary to declaration

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 provider or facility must promptly 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 declaration is prohibited from preventing or attempting to prevent, or unreasonably delaying or attempting 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.

The bill permits the mental health treatment provider of a declarant or a health care facility providing services to a declarant to 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 existing R.C. Chapter 2945. (criminal trials and competency to stand trial) or 5122. (hospitalization of mentally ill persons), 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, or (2) an emergency situation endangers the life or health of the declarant or others. (R.C. 2135.07.)

Rights, duties, and general exemption from liability of proxy

The proxy under a declaration for mental health treatment 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.

In exercising authority under a declaration, the proxy has a duty to act consistently with the declarant's desires 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 declarant's best interests.

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" (see "Definitions," below) for an action taken in good faith under a declaration for mental health treatment. (R.C. 2135.08.)

Revocation of declaration

A declarant may revoke a declaration for mental health treatment at any time the declarant has the capacity to consent to mental health treatment decisions. Any revocation of a declaration by a declarant must be in writing, signed by the declarant, and dated. The revocation is 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, 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. Upon the declarant's revocation of a declaration, the mental health treatment provider or the health care facility must make the revocation a part of the declarant's medical record. A valid declaration for mental health treatment revokes a prior, valid declaration for mental health treatment.

The bill also provides that 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. (R.C. 2135.09.)

General exemption from liability of mental health treatment provider or health care facility

The bill specifies that 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 for mental health treatment 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 (R.C. 2135.10).

Miscellaneous

The bill prohibits any person from requiring an individual to execute or to refrain from executing a declaration for mental health treatment as a criterion for insurance, as a condition for receiving mental health treatment or health care, or as a condition of admission to or discharge from a health care facility (R.C. 2135.11). The bill does not provide a penalty for a violation of the prohibition.

The bill specifies that a declaration for mental health treatment executed in accordance with its provisions does not supersede a valid declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment executed under existing R.C. Chapter 2133. ("living wills"), which is not in the bill (R.C. 2135.12(A); see **COMMENT 1**).

The bill provides that a declaration for mental health treatment executed in accordance with its provisions does not revoke a valid durable health care power of attorney created under R.C. Chapter 1337. (see "**Durable health care powers of attorney**," below, and **COMMENT 2**), but that a declaration so executed supersedes the designation of an attorney in fact made in a valid durable power of attorney for health care under that Chapter *with respect to the mental health treatment of the declarant*. The designation of an attorney in fact in a valid durable health care power of attorney under that Chapter remains effective in all other respects. (R.C. 2135.12(B).)

The bill permits a person who opposes any decision arising under the law it enacts regarding declarations for mental health treatment to make an application opposing the decision to the probate court of the county in which the declarant is located or in which the declaration was either witnessed or acknowledged as described in the bill (R.C. 2135.13(A)).

The bill specifies that, if a declarant has not named any proxies in the declaration, or if all the named proxies have withdrawn or are unable or unwilling to act at a time when the declaration has become operative, then the physician who has the primary responsibility for treating the declarant may petition the probate court of the county in which the declarant is located to appoint a person to act as a proxy. If the probate judge finds it to be in the best interest of the declarant, then the court must appoint a person to serve as a proxy for the declarant while the declaration is effective. The person so appointed must be a person who is eligible to serve as a proxy, determined as described above in "**Designation of proxy**." (R.C. 2135.13(B).)

Finally, the bill provides that a printed form of a declaration may be sold or otherwise distributed in Ohio for use by adults who are not advised by an attorney. By use of a printed form of that nature, a declarant may consent or refuse to consent to mental health treatment and may designate a proxy to make mental health treatment decisions in accordance with the bill's provisions. The printed form cannot 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 existing R.C. Chapter 2133. regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment or designations made under R.C. Chapter 1337., including regarding a durable health care power of attorney. (R.C. 2135.14.)

Definitions

The bill defines the following terms, for use in its provisions described above (R.C. 2135.01):

"Adult" means a person who is 18 years of age or older.

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

"Declarant" means an adult who has executed a declaration for mental health treatment in accordance with the bill.

"Declaration for mental health treatment" or "declaration" means a written document declaring preferences or instructions regarding mental health treatment executed in accordance with the bill.

"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.

"Guardian" means a person appointed by a probate court pursuant to existing R.C. Chapter 2111., not in the bill, to have the care and management of the person of an incompetent.

"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.

"Health care facility" has the same meaning as in R.C. 1337.11(I), as modified by the bill. Under that provision, "health care facility" means a hospital; hospice care program or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state; nursing home; home health agency; intermediate care facility for the mentally retarded; or *regulated community mental health organization*. "Regulated community mental health organization" means a "residential facility" as defined and licensed in R.C. 5119.22 (licensing of residential facilities) or a "community mental health agency" as defined in R.C. 5122.01 (hospitalization of mentally ill persons). (See **COMMENT 2**.)

"Incompetent" has the same meaning as in existing R.C. 2111.01, which is not in the bill. Under that provision, "incompetent" means any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within Ohio.

"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.

"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.

"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.

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

"Mental health treatment provider" means physicians, physician assistants, psychologists, licensed independent social workers, licensed professional clinical counselors, and "psychiatric nurses" (see below).

"Physician" means a person who is authorized under existing R.C. Chapter 4731., not in the bill, to practice medicine and surgery or osteopathic medicine and surgery.

"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, State Board of Psychology, and the State Board of Nursing.

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

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

"Psychiatrist" has the same meaning as in existing R.C. 5122.01, not in the bill (see **COMMENT 3**).

"Psychologist" has the same meaning as in existing R.C. 4732.01, not in the bill (see **COMMENT 4**).

"Registered nurse" has the same meaning as in existing R.C. 4723.01, not in the bill (see **COMMENT 5**).

"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.

Durable health care powers of attorney

Existing law

Existing law permits a person who is 18 years of age or older (an adult) who is of sound mind voluntarily to create a valid "durable power of attorney for health care" (an HCPOA) by executing a durable power of attorney, in accordance with specified provisions of law (R.C. 1337.13--not in the bill), that authorizes an attorney in fact to make *health care decisions* for the principal at any time that the attending physician of the principal determines that the principal has lost the capacity to make informed health care decisions for the principal. Generally, the authorization may include the right to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any *health care* that is being or could be provided to the principal. To be valid, a durable HCPOA must satisfy certain criteria, including being signed and either being witnessed or acknowledged. Subject to certain specified limitations, a durable HCPOA generally may designate any competent adult as the attorney in fact. (R.C.

1337.12; see **COMMENT 6** for a brief description of the effect of a durable power of attorney for health care.)

Existing law provides that a principal who creates a valid durable HCPOA may revoke that instrument or the designation of the attorney in fact under it. The principal may so revoke at any time and in any manner. The revocation is effective when the principal expresses an intention to so revoke, except that, if the principal made the principal's attending physician aware of the durable HCPOA, the revocation is effective upon its communication to the attending physician by the principal, a witness to the revocation, or other health care personnel to whom the revocation is communicated by such a witness. Absent actual knowledge to the contrary, the attending physician of the principal and other health care personnel who are informed of the revocation of a durable HCPOA by an alleged witness may rely on the information and act in accordance with the revocation. Also, unless the instrument provides otherwise, a valid durable HCPOA revokes a prior, valid durable HCPOA. (R.C. 1337.14.)

As used in the law governing durable HCPOAs (R.C. 1337.11): (1) "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's *physical or mental condition*, and (2) "health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.

Operation of the bill

The bill modifies the definition of "health care" that applies to the law governing durable HCPOAs so that it means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition *or physical or mental health* (R.C. 1337.11(G)). The bill modifies the definition of "health care facility" that applies to the law governing durable HCPOAs to also include a regulated community mental health organization, and defines "regulated community mental health organization" (R.C. 1337.11(I) and (AA)). These definitions are the same as the definitions described in "**Definitions**," above, that apply to the bill's provisions regarding declarations for mental health treatment.

The bill also specifies the effect of a "declaration for mental health treatment" upon a durable HCPOA by providing that, regardless of when the declaration is drafted, the execution of a declaration for mental health treatment does not revoke a valid durable HCPOA; rather, a declaration for mental health treatment executed in accordance with the bill supersedes a valid durable HCPOA *with regards to "mental health treatment" and the designation of a proxy to make decisions regarding mental health treatment*. "Mental health treatment" and "declaration for mental health treatment" both are defined, by reference, in the



same manner as described above in "Definitions." (R.C. 1337.11(E) and (S) and 1337.14(D).)

Finally, the bill modifies the definition of "home health agency" that applies to the law governing durable HCPOAs to (R.C. 1337.11(K)): (1) remove a cross-reference to the definition of that term as contained in "R.C. 3701.88," which was repealed by Am. Sub. H.B. 94 of the 124th General Assembly, effective September 5, 2001, and (2) replace that reference with a reference to the definition of that term as contained in existing "R.C. 5101.61." The bill also modifies the definition of "medical claim" that applies to the law governing durable HCPOAs to replace the cross-reference to the definition of that term from "R.C. 2305.11" to "R.C. 2305.113," which was enacted by Am. Sub. S.B. 281 of the 124th General Assembly and currently contains the definition of "medical claim" (R.C. 1337.11(R)).

COMMENT

1. Existing R.C. Chapter 2133., not in the bill, contains Ohio's law regarding the execution, effect, and use of declarations governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for the declarant. Under that law, "life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying (R.C. 2133.01(Q)--not in the bill). The Chapter also contains Ohio's law regarding do-not-resuscitate identification and orders.

2. "Residential facility" means a publicly or privately operated home or facility that provides one of the following: (a) room and board, personal care services, and community mental health services to one or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner, (b) room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner, or (c) room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner (R.C. 5119.22(A)(1)(d)--not in the bill).

"Community mental health agency" means any agency, program, or facility with which a board of alcohol, drug addiction, and mental health services contracts

to provide the mental health services listed in R.C. 340.09 (R.C. 5122.01(H)--not in the bill).

3. "Psychiatrist" means a licensed physician who has satisfactorily completed a residency training program in psychiatry, as approved by the Residency Review Committee of the American Medical Association, the Committee on Post-Graduate Education of the American Osteopathic Association, or the American Osteopathic Board of Neurology and Psychiatry, or who on July 1, 1989, has been recognized as a psychiatrist by the Ohio State Medical Association or the Ohio Osteopathic Association on the basis of formal training and five or more years of medical practice limited to psychiatry (R.C. 5122.01(E)).

4. "Psychologist" means any person who holds self out to the public by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," or any other terms that imply the person is trained, experienced, or an expert in the field of psychology (R.C. 4732.01(A)).

5. "Registered nurse" means an individual who holds a current, valid license issued under R.C. Chapter 4723. that authorizes the practice of nursing as a registered nurse (R.C. 4723.01(A)).

6. Existing R.C. 1337.11 to 1337.17, unchanged by the bill other than as described above in "**Durable health care powers of attorney**," contains Ohio's law governing durable HCPOAs. Existing R.C. 1337.13 provides that, if a person validly establishes a durable HCPOA, the attorney in fact under it may make health care decisions for the principal only if the instrument substantially complies with the law's requirements and specifically authorizes the attorney in fact to make health care decisions for the principal, and only if the principal's attending physician determines that the principal has lost the capacity to make informed health care decisions for the principal. Subject to certain specified limitations, generally, the attorney in fact may make health care decisions for the principal to the same extent as the principal could make those decisions for the principal if the principal had the capacity to do so, and generally must act consistently with the principal's desires or, if the desires are unknown, in the principal's best interest.

The attorney in fact does not have authority, on behalf of the principal, to refuse or withdraw informed consent to life-sustaining treatment, unless the principal is in a terminal condition or in a permanently unconscious state and unless the applicable requirements described in this paragraph are satisfied. In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a permanently unconscious state, the consulting physician associated with the determination that the principal is in the permanently unconscious state must be a physician who, by virtue of advanced

education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery or osteopathic medicine and surgery, is qualified to determine whether the principal is in a permanently unconscious state. In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal must determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal.

Except as otherwise described in this paragraph, the attorney in fact does not have authority, on behalf of the principal, to refuse or withdraw informed consent to health care necessary to provide comfort care. This provision does not preclude, and cannot be construed as precluding, an attorney in fact from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal if, under specified circumstances described in the second succeeding paragraph, the attorney in fact would not be prohibited from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal.

The attorney in fact does not have authority to refuse or withdraw informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless the principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

The attorney in fact does not have authority to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal, unless the principal is in a terminal condition or in a permanently unconscious state and unless the following apply: (a) the principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal, (b) if the principal is in a permanently unconscious state, the principal has authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal when

the principal is in a permanently unconscious state by including specified statements and items in the durable power of attorney for health care, and (c) if the principal is in a permanently unconscious state, the principal's attending physician determines, in good faith, that the principal authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal when the principal is in a permanently unconscious state by complying with specified requirements.

The attorney in fact does not have authority to withdraw informed consent to any health care to which the principal previously consented, unless at least one of the following applies: (a) a change in the physical condition of the principal has significantly decreased the benefit of that health care to the principal, or (b) the health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use. (R.C. 1337.13--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-18-03	p. 161
Reported, H. Civil & Commercial Law	03-26-03	pp. 290-291
Passed House (96-0)	04-02-03	pp. 321-322
Reported, S. Judiciary on Civil Justice	---	---

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