



Ohio Revised Code

Section 1337.16 Duties of health care providers.

Effective: July 22, 1998

Legislation: Senate Bill 66 - 122nd General Assembly

(A) No physician, health care facility, other health care provider, person authorized to engage in the business of insurance in this state under Title XXXIX of the Revised Code, health insuring corporation, other health care plan, or legal entity that is self-insured and provides benefits to its employees or members shall require an individual to create or refrain from creating a durable power of attorney for health care, or shall require an individual to revoke or refrain from revoking a durable power of attorney for health care, as a condition of being admitted to a health care facility, being provided health care, being insured, or being the recipient of benefits.

(B)(1) Subject to division (B)(2) of this section, an attending physician of a principal or a health care facility in which a principal is confined may refuse to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of a matter of conscience or on another basis. An employee or agent of an attending physician of a principal or of a health care facility in which a principal is confined may refuse to comply with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of a matter of conscience.

(2)(a) An attending physician of a principal who, or health care facility in which a principal is confined that, is not willing or not able to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care to use or continue, or to withhold or withdraw, health care that were given under division (A) of section 1337.13 of the Revised Code, or with any probate court reevaluation order issued pursuant to division (D)(6) of this section, shall not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay, the transfer of the principal to the care of a physician who, or a health care facility that, is willing and able to so comply or allow compliance.

(b) If the instruction of an attorney in fact under a durable power of attorney for health care that is given under division (A) of section 1337.13 of the Revised Code is to use or continue life-sustaining treatment in connection with a principal who is in a terminal condition or in a permanently



unconscious state, the attending physician of the principal who, or the health care facility in which the principal is confined that, is not willing or not able to comply or allow compliance with that instruction shall use or continue the life-sustaining treatment or cause it to be used or continued until a transfer as described in division (B)(2)(a) of this section is made.

(C) Sections 1337.11 to 1337.17 of the Revised Code and a durable power of attorney for health care created under section 1337.12 of the Revised Code do not affect or limit the authority of a physician or a health care facility to provide or not to provide health care to a person in accordance with reasonable medical standards applicable in an emergency situation.

(D)(1) If the attending physician of a principal and one other physician who examines the principal determine that the principal is in a terminal condition or in a permanently unconscious state, if the attending physician additionally determines that the principal has lost the capacity to make informed health care decisions for the principal and that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal, and if the attorney in fact under the principal's durable power of attorney for health care makes a health care decision pertaining to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment, the attending physician shall do all of the following:

- (a) Record the determinations and health care decision in the principal's medical record;
- (b) Make a good faith effort, and use reasonable diligence, to notify the appropriate individual or individuals, in accordance with the following descending order of priority, of the determinations and health care decision:
 - (i) If any, the guardian of the principal. This division does not permit or require the appointment of a guardian for the principal.
 - (ii) The principal's spouse;
 - (iii) The principal's adult children who are available within a reasonable period of time for consultation with the principal's attending physician;



(iv) The principal's parents;

(v) An adult sibling of the principal or, if there is more than one adult sibling, a majority of the principal's adult siblings who are available within a reasonable period of time for such consultation.

(c) Record in the principal's medical record the names of the individual or individuals notified pursuant to division (D)(1)(b) of this section and the manner of notification;

(d) Afford time for the individual or individuals notified pursuant to division (D)(1)(b) of this section to object in the manner described in division (D)(3)(a) of this section.

(2)(a) If, despite making a good faith effort, and despite using reasonable diligence, to notify the appropriate individual or individuals described in division (D)(1)(b) of this section, the attending physician cannot notify the individual or individuals of the determinations and health care decision because the individual or individuals are deceased, cannot be located, or cannot be notified for some other reason, the requirements of divisions (D)(1)(b), (c), and (d) of this section and, except as provided in division (D)(3)(b) of this section, the provisions of divisions (D)(3) to (6) of this section shall not apply in connection with the principal. However, the attending physician shall record in the principal's medical record information pertaining to the reason for the failure to provide the requisite notices and information pertaining to the nature of the good faith effort and reasonable diligence used.

(b) The requirements of divisions (D)(1)(b), (c), and (d) of this section and, except as provided in division (D)(3)(b) of this section, the provisions of divisions (D)(3) to (6) of this section shall not apply in connection with the principal if only one individual would have to be notified pursuant to division (D)(1)(b) of this section and that individual is the attorney in fact under the durable power of attorney for health care. However, the attending physician of the principal shall record in the principal's medical record information indicating that no notice was given pursuant to division (D)(1)(b) of this section because of the provisions of division (D)(2)(b) of this section.

(3)(a) Within forty-eight hours after receipt of a notice pursuant to division (D)(1) of this section, any individual so notified shall advise the attending physician of the principal whether the individual objects on a basis specified in division (D)(4)(c) of this section. If an objection as described in that



division is communicated to the attending physician, then, within two business days after the communication, the individual shall file a complaint as described in division (D)(4) of this section in the probate court of the county in which the principal is located. If the individual fails to so file a complaint, the individual's objections as described in division (D)(4)(c) of this section shall be considered to be void.

(b) Within forty-eight hours after the priority individual or any member of a priority class of individuals receives a notice pursuant to division (D)(1) of this section or within forty-eight hours after information pertaining to an unnotified priority individual or unnotified priority class of individuals is recorded in a principal's medical record pursuant to division (D)(2)(a) or (b) of this section, the individual or a majority of the individuals in the next class of individuals that pertains to the principal in the descending order of priority set forth in divisions (D)(1)(b)(i) to (v) of this section shall advise the attending physician of the principal whether the individual or majority object on a basis specified in division (D)(4)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two business days after the communication, the objecting individual or majority shall file a complaint as described in division (D)(4) of this section in the probate court of the county in which the principal is located. If the objecting individual or majority fails to file a complaint, the objections as described in division (D)(4)(c) of this section shall be considered to be void.

(4) A complaint of an individual that is filed in accordance with division (D)(3)(a) of this section or of an individual or majority of individuals that is filed in accordance with division (D)(3)(b) of this section shall satisfy all of the following:

(a) Name any health care facility in which the principal is confined;

(b) Name the principal, the principal's attending physician, and the consulting physician associated with the determination that the principal is in a terminal condition or in a permanently unconscious state;

(c) Indicate whether the plaintiff or plaintiffs object on one or more of the following bases:

(i) To the attending physician's determination that the principal has lost the capacity to make



informed health care decisions for the principal;

(ii) To the attending physician's determination that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal;

(iii) That, in exercising the attorney in fact's authority, the attorney in fact is not acting consistently with the desires of the principal or, if the desires of the principal are unknown, in the best interest of the principal;

(iv) That the durable power of attorney for health care has expired or otherwise is no longer effective;

(v) To the attending physician's and consulting physician's determinations that the principal is in a terminal condition or in a permanently unconscious state;

(vi) That the attorney in fact's health care decision pertaining to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment is not authorized by the durable power of attorney for health care or is prohibited under section 1337.13 of the Revised Code;

(vii) That the durable power of attorney for health care was executed when the principal was not of sound mind or was under or subject to duress, fraud, or undue influence;

(viii) That the durable power of attorney for health care otherwise does not substantially comply with section 1337.12 of the Revised Code.

(d) Request the probate court to issue one or more of the following types of orders:

(i) An order to the attending physician to reevaluate, in light of the court proceedings, the determination that the principal has lost the capacity to make informed health care decisions for the principal, the determination that the principal is in a terminal condition or in a permanently unconscious state, or the determination that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal;



(ii) An order to the attorney in fact to act consistently with the desires of the principal or, if the desires of the principal are unknown, in the best interest of the principal in exercising the attorney in fact's authority, or to make only health care decisions pertaining to life-sustaining treatment that are authorized by the durable power of attorney for health care and that are not prohibited under section 1337.13 of the Revised Code;

(iii) An order invalidating the durable power of attorney for health care because it has expired or otherwise is no longer effective, it was executed when the principal was not of sound mind or was under or subject to duress, fraud, or undue influence, or it otherwise does not substantially comply with section 1337.12 of the Revised Code.

(e) Be accompanied by an affidavit of the plaintiff or plaintiffs that includes averments relative to whether the plaintiff is an individual or the plaintiffs are individuals as described in division (D)(1)(b)(i), (ii), (iii), (iv), or (v) of this section and to the factual basis for the plaintiff's or the plaintiffs' objections;

(f) Name any individuals who were notified by the attending physician in accordance with division (D)(1)(b) of this section and who are not joining in the complaint as plaintiffs;

(g) Name, in the caption of the complaint, as defendants the attending physician of the principal, the attorney in fact under the durable power of attorney for health care, the consulting physician associated with the determination that the principal is in a terminal condition or in a permanently unconscious state, any health care facility in which the principal is confined, and any individuals who were notified by the attending physician in accordance with division (D)(1)(b) of this section and who are not joining in the complaint as plaintiffs.

(5) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than an objecting individual as described in division (D)(3)(a) of this section, other than an objecting individual or majority of individuals as described in division (D)(3)(b) of this section, and other than persons described in division (D)(4)(g) of this section are prohibited from commencing a civil action under division (D) of this section and from joining or being joined as parties to an action commenced under division (D) of this section, including joining by way of intervention.



(6)(a) A probate court in which a complaint as described in division (D)(4) of this section is filed within the period specified in division (D)(3)(a) or (b) of this section shall conduct a hearing on the complaint after a copy of it and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after such service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether a requested order will be issued.

(b) If the health care decision of the attorney in fact authorized the use or continuation of life-sustaining treatment and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the principal or an order to the attorney in fact as described in division (D)(4)(d)(i) or (ii) of this section, the court shall issue the requested order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(c) If the health care decision of the attorney in fact authorized the withholding or withdrawal of life-sustaining treatment and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the principal or an order to the attorney in fact as described in division (D)(4)(d)(i) or (ii) of this section, the court shall issue the requested order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by a preponderance of the evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(d) If the plaintiff or plaintiffs requested an invalidation order as described in division (D)(4)(d)(iii) of this section, the court shall issue the order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence.

(e) If the court issues a reevaluation order to the principal's attending physician pursuant to division (D)(6)(b) or (c) of this section, the attending physician shall make the requisite reevaluation. If, after



doing so, the attending physician again determines that the principal has lost the capacity to make informed health care decisions for the principal, that the principal is in a terminal condition or in a permanently unconscious state, or that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal, the attending physician shall notify the court in writing of the determination and comply with division (B)(2) of this section.

(E)(1) In connection with the provision of comfort care in a manner consistent with divisions (C) and (E) of section 1337.13 of the Revised Code to a principal who is in a terminal condition or in a permanently unconscious state, nothing in sections 1337.11 to 1337.17 of the Revised Code precludes the attending physician of the principal who carries out the responsibility to provide comfort care to the principal in good faith and while acting within the scope of the attending physician's authority from prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the principal, including, but not limited to, prescribing, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the principal's pain or discomfort and not for the purpose of postponing or causing the principal's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the principal's death. In connection with the provision of comfort care in a manner consistent with divisions (C) and (E) of section 1337.13 of the Revised Code to a principal who is in a terminal condition or in a permanently unconscious state, nothing in sections 1337.11 to 1337.17 of the Revised Code precludes health care personnel acting under the direction of the principal's attending physician who carry out the responsibility to provide comfort care to the principal in good faith and while acting within the scope of their authority from dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the principal, including, but not limited to, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the principal's pain or discomfort and not for the purpose of postponing or causing the principal's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the principal's death.

(2) If, at any time, a priority individual or any member of a priority class of individuals under division (D)(1)(b) of this section or if, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the principal in the descending order of priority set forth



in that division, believes in good faith that both of the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the principal may commence an action in the probate court of the county in which a principal who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the principal in a manner that is consistent with sections 1337.11 to 1337.17 of the Revised Code:

(a) Comfort care is not being used or continued in connection with the principal.

(b) The withholding or withdrawal of the comfort care is contrary to sections 1337.11 to 1337.17 of the Revised Code.

(F) Except as provided in divisions (D) and (E) of this section in connection with principals who are in a terminal condition or in a permanently unconscious state, sections 1337.11 to 1337.17 of the Revised Code do not authorize the commencement of any civil action in a probate court or court of common pleas for the purpose of obtaining an order relative to a health care decision made by an attorney in fact under a durable power of attorney for health care.

(G) A durable power of attorney for health care, or other document, that is similar to a durable power of attorney for health care authorized by sections 1337.11 to 1337.17 of the Revised Code, that is or has been executed under the law of another state prior to, on, or after October 10, 1991, and that substantially complies with that law or with sections 1337.11 to 1337.17 of the Revised Code shall be considered to be valid for purposes of those sections.