

# NOTICE OF PUBLIC RULES HEARING

DATE: Friday, February 15, 2019  
TIME: 11:00 a.m.  
LOCATION: Ohio Department of Health  
35 E. Chestnut Street  
Columbus, Ohio 43215  
ROOM: ODH Basement Training Room A

In accordance with *Chapter 119* of the Revised Code (R.C.), the Director of the Ohio Department of Health announces a Public Hearing at the date and time listed above to hear comments regarding the following action:

## Ohio Revised Code (O.A.C.) Chapter 3701-21-01 and 3701-21-25 – Food Service Operations.

Chapter 3701-21 Administrative Code provides procedures and standards for: licensing, inspecting, and investigating complaints in food service operations; resolving disputes between food service operations and local health districts; providing enforcement support to local health districts; facility layout and equipment specifications of food service operations; food choking standards; state survey procedures for local health district program evaluation; certification in food protection; appeal procedures; and embargo of food.

The following amendments are being proposed:

**3701-21-01:** Provides the definitions of the terms used within the code. The proposed amendments include: removed the floating sentence “As used in Chapter 3701-21 of the Administrative Code:” at the beginning of the definitions; added definition of Person in Charge; updated several internal code references; and removed the floating paragraph at the end of the rule.

**3701-21-25:** Provides standards and procedures for approval of certification in food protection courses of study and course providers, and for certifying individuals in food protection. The proposed amendments include: in (A) added after “approve” “the following categories of food certification” and removed “for level one and level two certification in food protection courses”; (AX1) replaced “A level one certification in food protection course is for a basic food handler” with “Person in charge”, and added after safety “and the requirements of paragraph (B) of rule 3717-1-02.4 of the Administrative Code. A person in charge certification course approved by the director of health prior to the effective date of this rule shall maintain its approval until a new course is submitted to the director of health no later than nine months after the effective date of this rule and approved or disapproved by the Director of Health no later than twelve months after the effective date of this rule. If a new course is not submitted and approved within twelve months of the effective date of this rule, the course will no longer be approved.”; (AX2) replaced “A level two certification in food protection course is for food protection manager certification” with “Manager certification in food protection.”; in (B) moved this section on the veteran’s requirements to the new section (E). Added to the beginning of the paragraph “Any person desiring to apply to the director of health for approval to conduct a food certification course of study shall complete an application prescribed by the director and submit the completed application to the director.” Replaced “The director shall not approve an” with “An”; replaced “that is incomplete or that does not adequately” with “to conduct a person in charge certification course or manager certification in food protection course shall”; and added “at least” after the word “contain”; in (B)(I) added “email address” after “address”; in (B)(2) replaced “Contact hours and curriculum.” with “Name of course to be conducted.”; in (BX2)(a) deleted the person in charge curriculum requirement as this has been added to a new Appendix A; in (B)(2)(b) deleted the manager certification curriculum requirement as this has been added to a new Appendix B; in (B)(3) new section added “Course agenda that identifies the core content as specified in appendix A of this rule for a person in charge certification course of study and as specified in appendix B of this rule for a manager certification in food protection course of study.”; in (B)(4) promoted (C)(2)(c) to this section and replaced the “.”

With a “;”; in (B)(5) promoted (C)(2)(d) to this section; replaced "name" with "names"; replaced "the" with "all"; replaced "instructor" with "instructors"; and replaced "instructor possesses" with "instructors possess"; (B)(5)(a) promoted (C)(2)(c) to this section; replaced “level one” with “person in charge”; split out “in food protection a registered sanitarian working in food safety or related experience or an instructor that has successfully completed the level two certification in food protection course.” Into new sections (B)(5)(a)(i) to (B)(5)(a)(ii); added a “;”; (B)(5)(b) promoted (C)(2)(d)(ii) to this section; and replaced “level two” with “manager”; (B)(5)(b)(i) demoted (C)(2)(a) to this section; added “food safety” after teaching; removed “working in public health”; and added “food safety” after related; (B)(5)(b)(ii) demoted (C)(2)(b) to this section; replaced “Completion of an approved course in certification with a passing score” with “Documentation that confirms the instructors possess approval from the course developer to instruct the course.”; (C)(2)(e) moved this section “A copy of all course materials, including student manuals, written or verbal exercises, instructor notebooks, and handouts to new section (C)(1)(b); in (B)(6) new section added “The names of all examination proctors and documentation that the proctors possess approval from the examination developer to proctor the examination.”; in (B)(7) replaced “the level two” with “a manager”; replaced “must be administered by an accredited certification organization that complies” with “shall comply”; replaced “2012” with “2016”; removed “accreditation of a”; replaced “protection manager” with “safety”; and replaced “program” with “examination.”; in (B)(8) replaced “the level one” with “a person in charge”; and added “, which shall contain the following.”; (B)(8)(a) new section added “The name of the course provider.”; (B)(5)(b) new section added “The name of the course completed.”; in (B)(8)(c) new section added “The date of course completion; and”; (B)(8)(d) new section added “The course provider approval number assigned by the director of health”; in (C) new section added “Person in charge certification and manager certification in food protection courses of study”; in (C)(1) new section added “An application for approval of a person in charge certification or manager certification in food protection course of study shall be completed on a form prescribed by the director and shall contain at least the following information.”; in (C)(1)(a) new section added “The applicant's name, address, email address and telephone number; and”; in (C)(1)(b) new section added “A copy of all course materials, such as student manuals, written or verbal exercises, instructor notebooks, access to interactive computer program, videos, and handouts.”; in (C)(2) new section added “Amendments to a person in charge or manager certification in food protection course of study approved by the director of health, shall be submitted to the director of health for approval prior to implementation.”; in (D) new section added “Person in charge certification and manager certification in food protection courses of study curriculum.”; (D)(1) new section added “The core content of a person in charge certification course of study shall contain a curriculum that complies with appendix A of this rule.”; in (D)(2) new section added “The core content of a manager certification in food protection course of study shall contain a curriculum that complies with appendix B of this rule.”; in (D)(3) new section added “A food certification course of study administered through interactive computer programming shall affirm that the course does not enable an individual to fast forward or skip through course content.”; (E) moved old section (B) to this new section “Individuals that submit with their applications proof that they are a service member or veteran, or the spouse or surviving spouse of a service member or veteran will receive priority processing”; in (E)(1) moved old section (B)(1) to this new section “The acceptable proof of service member/veteran status documents are.”; in (E)(1)(a) moved old section (B)(1)(a) to this new section “Department of defense identification card (active, retired, temporary disability retirement list (TDRL));”; in (E)(1)(b) moved old section (B)(1)(b) to this new section “DD214 military discharge certificate indicating disposition of discharge.”; (E)(1)(c) moved old section (B)(1)(c) to this new section “Report of separation from the national archives national personnel records center in St. Louis, Missouri; or”; (E)(1)(d) moved old section (B)(1)(d) to this new section “Veterans identification card from the department of veterans affairs.”; (E)(2) moved old section (B)(2) to this new section “All acceptable proof documents, except veterans identification card, must show the veteran status as honorable, general, general under honorable conditions, or discharged or released under conditions other than dishonorable.”; in (F) replaced “level one” with “person in charge”; and removed “in food protection”; in (F)(1) replaced “curriculum, instructor, or course materials for approval prior to changing the approved course.” with “agenda, instructors, or provider contact information.”; in (F)(2) replaced “conduct” with “administer”; and replaced “.” with “; and”; in (G) replaced “level two” with “manager”; in (G)(1) former (G)(1) deleted. Replaced “curriculum, instructor, or course materials for approval prior to changing the approved course.” with “agenda, instructors, or provider contact information.”; (G)(2) former (G)(2) moved to (G)(3). Replaced “conduct” with “administer”; and replaced “.” With “;”; (G)(3) moved from former section (G)(3); in (G)(4) replaced “Promptly distribute” with “Distribute”; added “who” between “individuals” and “successfully”; replaced “completing” with “complete”; and added at the end “within ten business days of receiving the certifications from the director of health.”; in (H) added “food” in front of “certification”; replaced “in food protection course” with “course of study or provider”; added after the word “compliance” the following “with the most current requirements in Chapter 3717-1”; and added “the Administrative Code and” between “of” and “this rule”; in (I) replaced “not approve” with “disapprove”; added “food”

before “certification”; replaced “in food protection course and shall disapprove a previously approved course anytime the course or course provider” with “course of study or provider if the course or provider”; replaced “The” with “An”; added after applicant “, course of study,”; and replaced “fifteen” with “thirty” in two places; in (J) replaced “level two” with “manager”; and added to the end of this section the following “complete a manager certification in food protection course and successfully pass an approved course examination that meets the requirements of this rule and are administered by a course provider approved by the Director of Health. An individual that has successfully completed a course and examination that meets the requirements of this rule administered by a provider not approved by the director of health may apply for certification in food protection by submitting an application to the director of health on a form prescribed by the director along with the following”; in (J)(1) replaced “Attend a level two certification in food protection course and successfully pass the course examination that meets the requirements of this rule and is offered by an approved course provider; or” with “Documentation that the individual has successfully completed a manager certification in food protection course of study in accordance with this rule; and”; in (J)(2) replaced “Provide documentation to the director's satisfaction that the individual has successfully completed a similar certification in food protection program” with “A certificate that confirms the individual has successfully completed a course examination in accordance with this rule within one year of completion of an approved manager certification in food protection course of study.”; (K.) was modified to read “Person in charge certification”; (K)(1), former paragraph (I), “The licensor shall mandate person in charge certification for at least one person in charge per shift in risk level I, II, III, and IV food service operations and retail food establishments licensed after March 1, 2010.” was moved to this new section.; (K)(2) combined old paragraph (2) and (3) to read “The licensor shall mandate person in charge certification for all persons in charge in food service operations and retail food establishments initially licensed prior to March 1, 2010 that have been implicated in a foodborne disease outbreak or the licensor has documented a failure to maintain sanitary conditions as per sections 3717.29 and 3717.49 of the Revised Code.”; (K)(3) removed “new” in front of “food” and “retail”; replaced “paragraphs” with “paragraph”; updated the code reference; replaced “, may provide” with “that provides”; replaced “licensor's satisfaction” with “licensor”; replaced “successfully completed a similar” with “obtained manager”; replaced “program equivalent to the level one standards established in this rule are” with “in food protection issued by the Director of Health is”; replaced “attend the mandatory level one” with “obtain person in charge”; and removed “in food protection training” at the end of the rule.

## **Ohio Revised Code (O.A.C.) Chapter 3701-62– Do Not Resuscitate.**

The rules set forth in Chapter 3701-62 of the Ohio Administrative Code establish the Do Not Resuscitate (“DNR”) Order and Protocol in Ohio pursuant to section 2133.25 of the Ohio Revised Code. The DNR Order and Protocol establish and provide a standardized method of procedure for the withholding of CPR by physicians, emergency medical services personnel, and health care facilities. The rules set forth in Chapter 3701-62 include, but are not limited to, the DNR Order form, Protocol, liability protections, and prohibitions.

### **Rescind and Replaced Rules:**

**3701-62-05**– The rule is being rescinded due to Legislative Service Commission rule drafting requirements for a greater than fifty percent change to the rule content. The rule establishes the DNR Protocol and when it becomes effective. The revisions to the existing rule language make formatting changes for ease of use and flow of information and to clarify the requirements pertaining to documentation of a DNR Order in an individual’s record in the absence of a valid DNR form.

- The appendix to this rule establishes the DNR Protocol. The Protocol is being revised to reflect current industry language and standards for congruence with the revised DNR Order form.

**3701-62-07**– The rule is being rescinded due to Legislative Service Commission rule drafting requirements for a greater than fifty percent change to the rule content. The rule sets forth the requirements for emergency medical services personnel and compliance with the DNR Protocol. The rule authorizes EMS personnel to accept an oral DNR Order from a physician, APRN, or PA and requires verification of issuer's identity. The revisions to the existing rule language incorporate the use of the terms “authorized healthcare provider” and “living will declaration” and to clarify that emergency services personnel are not required to search a person for DNR identification in accordance with section 2133.22 of the Revised Code.

**3701-62-09**– The rule is being rescinded due to Legislative Service Commission rule drafting requirements for a greater than fifty percent change to the rule content. The rule sets forth the requirement that a transferring health care facility must

notify a receiving health care facility of the existence of a person's DNR Order prior to transfer requires an existing oral DNR Order to be written and accompany the person upon discharge. The revisions to the existing rule language provide clarification of the requirement for facilities to notify receiving facilities and transporting personnel of the existence of a DNR when transferring a patient. Furthermore, the revisions clarify that a DNR form or authorized DNR identification must accompany any individual being transferred and provides the specific types of identification that is authorized.

**3701-62-10**– The rule is being rescinded due to Legislative Service Commission rule drafting requirements for a greater than fifty percent change to the rule content. The rule sets forth the relationship between the DNR, living will declarations, and durable powers of attorney for health care. DNR identification based upon a valid declaration supersedes the authority of a durable power attorney and its named agent(s). A valid durable power of attorney for health care supersedes a DNR based upon an order from a physician, APRN, or PA if that order is inconsistent with the authority of the durable power of attorney for health care. An active living will declaration supersedes DNR identification based upon a previous living will declaration or DNR that is inconsistent with the current declaration. Finally, to the extent that a known conflict exists between DNR identification based upon a valid DNR Order to which the principal consented, and a valid living will declaration, the more recent document supersedes.

#### **Amended Rules:**

**3701-62-01** – The rule sets forth the definitions used throughout the Chapter, such as “CPR,” “do-not-resuscitate order,” “do-not-resuscitate protocol,” and “cardiac arrest”. The rule is being revised to include a new definition for “authorized healthcare provider,” include the definition of “comfort care” from section 2133.01 of the Revised Code, to clarify that for the purposes of this Chapter, “declaration” means a “living will declaration,” and to include the new definition for “advanced practice nurse” consistent with section 4723.42 of the Revised Code.

**3701-62-02** – The rule sets forth the authority and immunities pertaining to DNRs for APRNs and PAs. The rule is being revised to change the existing language specifying Certified Nurse Practitioners and Clinical Nurse Specialists to refer to APRNs consistent with section 4723.42 of the Revised Code. This change incorporates both those specializations as well as Certified Registered Nurse Midwives and Certified Registered Nurse Anesthetists.

**3701-62-03** – The rule sets forth immunities from criminal, civil, and professional actions for withholding or withdrawing CPR from a patient with a valid DNR Order for medical, emergency services personnel, and other health care workers. The rule is being revised to replace previous references to physicians, CNP/CNSs, and PAs with the term “authorized healthcare provider.”

**3701-62-04** – The rule sets forth lists various items that are approved as DNR identification (such as a DNR Order, hospital-type bracelets, necklaces bearing the DNR logo, and wallet cards); establishes when a person is eligible to obtain DNR identification; and states how a person can obtain DNR identification. The rule is being revised to update language to reflect the use of the terms “authorized health care provider” and “living will declaration,” clarify that the DNR logo and individual’s identifying information must be contained on identification items, and clarify that the DNR Order form shall not be modified in any way or include additional medical instructions that will not be provided immunities under the Chapter. Appendix A to this rule is the State of Ohio DNR Order form. The form is being revised to:

- Streamline the form for easier recognition by individuals and healthcare providers.
- Revise the Protocol to reflect current industry language and standards.
- Include language clarifying immunities granted under Chapter 2133. Of the Revised Code.
- Clarify that a copy of the DNR Order form or authorized identification must accompany the individual during transfers between facilities.

**3701-62-06**– The rule sets forth ways in which a person may revoke his or her DNR identification, including, but not limited to, destroying the DNR Order form or wallet card; permanently removing DNR jewelry; and revoking a declaration intended to be used as a DNR identification. The rule requires every attending physician, APRN, or PA that issues an order discontinuing a valid DNR Order to ask the patient prior to discharge or transfer whether the patient wants to make another DNR declaration. The rule is being revised to incorporate the use of the terms “authorized healthcare provider” and “living will declaration.”

**3701-62-08**– The rule sets forth the requirement that physicians, CNPs, CNSs, or health care facilities that are unwilling or unable to comply with a person's DNR, to not interfere with the transfer of the person to a provider who will follow the DNR Protocol. The rule is being revised to replace the references to CNPs and CNSs to APRNs.

**3701-62-12**– The rule sets forth the prohibition for insurance, health benefit plans, and other providers from denying, modifying, or canceling insurance coverage or care plans as a result of a person obtaining a DNR Order. The rule further states, that a provider cannot require a person to rescind a DNR Order to obtain treatment. The rule is being revised to replace the terms CNP and CNS with APRN and clarify that policies in effect and after July 9, 1998 shall not be impacted by an individual's choice to have a DNR.

**3701-62-13**– The rule sets forth the rights of an individual with a DNR as they pertain to informed consent and declarations pursuant to sections 2133.01 to 2133.15 of the Revised Code. The rule grants an individual the right to make decisions regarding the withholding, or withdrawal of CPR as long as the person is mentally able to make those decisions. Finally, the rule establishes the fact that a failure to include a specific authorization for the withholding or withdrawal of CPR in a declaration does not preclude the withholding or withdrawal of CPR. The rule is being revised to include the term “living will” with declaration for clarity.

**3701-62-14**– The rule sets forth the prohibitions pertaining to a DNR Order and DNR identification. The rule prohibits a physician, CNP, or CNS from delaying the transfer of a patient in violation of division (B) of section 2133 of the Revised Code. Additional prohibitions include: falsification and forgery of a DNR for another individual as well as the falsification or forgery of a revocation; defacement, concealment, cancelation or obliteration of another individuals DNR Order without permission; and concealment or withholding knowledge of a DNR revocation with the intent to cause the use, withholding, or withdrawal of CPR for the other person. Pursuant to section 2133.26 of the Revised Code, whoever violates paragraph (A) or (E) of this rule is guilty of a misdemeanor of the third degree. Whoever violates paragraph (B), (C), or (D) of this rule is guilty of a misdemeanor of the first degree. The rule is being revised to include replace the use of CNP and CNS with APRN and to incorporate the use of the term “authorized healthcare provider.”

### **Ohio Revised Code (O.A.C.) Chapter 3701-81 – Lead Safe Rental Registry.**

The Ohio Lead-Safe Rental Housing Registry is a voluntary registry for use by owner/agents of rental housing in the state. The registry is voluntary except for properties subject to a lead hazard control order issued by the director of health or his delegate, then it is required that the property be listed on the registry once the rental property has complied with the order to control the lead hazards subject to the lead hazard control order. Property owners/agents who want to participate must follow the requirements of the United States Environmental Protection Agencies (USEPA) Renovation Remodeling and Painting (RRP) rule. These include conducting visual assessment, and if indicated completing lead-safe work practices according to standards outlined in US EPA RRP, followed by conducting a Lead clearance (outlined in rule). A new online Lead-Safe Housing Registry will be developed in partnership with the Ohio Housing Finance Agency where interested parties may search for lead-safe rental properties. The residential rental unit lead-safe maintenance practices (Lead Clearance) will need updated annually for a rental unit to remain on the lead-safe housing registry. Rental properties that are not updated annually will drop off the registry. Property owners/agents are required to maintain records of lead-safe maintenance practices while listed on the registry.

### **Hearing and Contact Information:**

At the hearing, people affected by the proposed action may appear and be heard in person or accompanied by an attorney. They may present their positions, arguments, or contentions orally or in writing; may offer witnesses; and may present evidence showing that the proposed rule, if adopted or effectuated, will be unreasonable or unlawful.

To aid in getting visitors through building security, any persons intending to testify at the hearing or planning to observe are encouraged to pre-register by writing to the Office of the General Counsel, Ohio Department of

Health, 246 North High Street, 7<sup>th</sup> Floor, Columbus, Ohio 43215, or by phone to (614) 466-4882, or send an e-mail to [odhrules@odh.ohio.gov](mailto:odhrules@odh.ohio.gov).

Copies of the proposed rule will be available on the Register of Ohio website:

<http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/searchRuleNumber.jsp> approximately a half day after the rule is filed, or from the Office of the General Counsel, Ohio Department of Health (<https://www.odh.ohio.gov/rules/drafts/drafts.aspx>).

**Please e-mail any written comments to [ODHrules@odh.ohio.gov](mailto:ODHrules@odh.ohio.gov) by 5:00 p.m. on December 18, 2018.**

01/11/2019