MEMORANDUM

TO: Kaye Norton, Ohio Department of Health

FROM: Sydney King, Regulatory Policy Advocate

DATE: November 20, 2013

RE: **CSI Review – Do-Not-Resuscitate (DNR) Protocol (Rules 3701-62-01 to 3701-62-14)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of fourteen rules proposed by the Ohio Department of Health (ODH) related to do-not-resuscitate protocol. Three rules are proposed with no changes and eleven contain several amendments. The rule package was filed with the CSI Office on August 26, 2013, and the comment period for the rules closed on October 1, 2013. Two comments were received during the public comment period.

The rule package establishes the do-not-resuscitate (DNR) order and protocol in Ohio pursuant to Ohio Revised Code 2133.25. The requirements provide a standardized method of procedure for the withholding of CPR by physicians, emergency medical services personnel, and health care facilities. The rules have additional requirements for DNR order forms, protocol, liability protections, and prohibitions. Several revisions were made to the rules to include the definition and requirements for "physician's assistant."

According to the BIA, stakeholders were included in the initial review of the draft regulation.

ODH also requested input from stakeholders on July 13, 2013, resulting in no substantive requests for modification. During the public comment period, two comments were received. One of the comments resulted in a technical change to Rule 3701-62-08. The second comment suggested including a statement regarding the protocol when family or bystanders request resuscitation. ODH amended the form to include this statement. The stakeholder also expressed concerns about whether a DNR form is invalidated if an individual or a physician writes additional medical instructions on it and to make changes to the DNR form to address these concerns. ODH engaged in discussions with the stakeholder and is currently looking into the issue. However, ODH decided not to include the recommended change to the DNR form because statutory provisions limit its authority to do so.

ODH states the adverse impact incurred by healthcare providers is the time needed to complete the DNR form. ODH estimates the cost to authorized practitioners is dependent upon the practitioner completing the form. According to ODH, the cost would typically be included as part of the fee charged to an individual requesting the DNR order for a standard office visit or consultation with that provider. ODH justifies the adverse impact because it is required by O.R.C. 2133.25 to provide and maintain a standardized method of procedure for the withholding of CPR by health care practitioners and facilities.

During its review, the CSI Office identified the time needed to understand and implement the requirements contained in the rule package as an additional adverse impact. ODH acknowledged this additional impact and stated that the DNR is a common form and the healthcare industry (providers and facilities) are well aware of their obligations as they relate to the DNR. Additionally, facilities, such as long-term care facilities and hospitals, often include the requirements as part of the facility's policies and/or standard operating procedures. However, in the event that a provider is unfamiliar with the DNR order and obligations, ODH estimates it would take no more than 15 minutes to read the rules.

The CSI Office is not suggesting any changes with respect to the rules or the BIA for the following reasons:

- The adverse impacts are justified.
- ODH addressed the comments received from the public during the public comment period.
- The BIA submitted by ODH is accurate and complete and does not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office.

Recommendation

For the reasons explained above this office does not have any recommendations regarding this

rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office