MEMORANDUM

TO: Alicyn Carrel, Ohio Department of Health

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: November 21, 2018

RE: **CSI Review – Do Not Resuscitate (OAC 3701-62-01 through 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 thirteen amended[1] rules and one no-change rule proposed by the Ohio Department of Health (ODH). The rule package was submitted to the CSI Office on September 11, 2018 and the public comment period was held open through October 11, 2018.

The rules in this package cover Ohio's Do Not Resuscitate (DNR) Order and Protocol, which sets forth requirements and procedures for the withholding of cardiopulmonary resuscitation (CPR) by medical personnel. Ohio Administrative Code (OAC) 3701-62-01 details the definitions used in the Chapter, which are being amended to include definitions for "authorized health care provider" and update definitions for "comfort care," "declaration," and "advanced practice nurse." OAC 3701-62-02 establishes the authority of certified nurse practitioners, clinical nurse specialists, and physician assistants and is being amended to include the term "advanced practice registered

[1] OAC 3701-62-05, 3701-62-07, 3701-62-09, and 3701-62-10 are being amended to the extent that the Legislative Service Commission requires the Department to rescind the rules and replace them with new rules of the same rule number.

nurses" and make clarifying edits. OAC 3701-62-03 establishes immunity from criminal prosecution for medical personnel abiding by DNR procedures. The rule is being amended to include the new rule term "authorized health care provider," as well as including immunity for emergency medical services (EMS) personnel. OAC 3701-62-04 addresses DNR identification, which can include a DNR order, a copy of an individual's living will declaration, and a DNR-identifying bracelet or wallet card. The rule is being updated to include new definitions and clarifying language. Appendix A to the rule contains the DNR Order Form and is being replaced with a new form that includes updated immunity information and clarified language that reflects current medical standards. OAC 3701-62-05 establishes the DNR protocol and is being updated to reformat the rule language. The appendix to the rule is being amended to include current medical practices and to reflect changes made to the DNR Order Form. OAC 3701-62-06 addresses revocation of DNR identification or status and is being amended to reflect changes to other rules in the package. OAC 3701-62-07 sets forth compliance requirements for EMS personnel and is being amended to include updated definitions and clarification. OAC 3701-62-08 and 3701-62-09 detail the procedure for transferring a patient with DNR identification from the care of a medical professional who is unable or unwilling to comply with DNR protocol. The rules are being amended to update terminology and provide clarification regarding DNR identification. OAC 3701-62-10 sets forth guidelines for the relationship between DNR orders and identification with living will declarations and durable powers of attorney. The rule is being amended to include clarification and revised language formatting. OAC 3701-62-11 establishes that compliance with DNR protocol does not constitute homicide or suicide and is being proposed without changes. OAC 3701-62-12 and 3701-62-13 set forth requirements for DNR effects on insurance and individual rights and are being amended to include new definitions and clarify language. OAC 3701-62-14 establishes prohibitions and the penalties for violations. The rule is being amended to include new definitions.

During early stakeholder outreach, ODH sent the proposed rules to industry stakeholders for feedback, including health care and EMS providers, professional associations, medical facilities, and government agencies. During this time, stakeholders suggested a number of changes to the rules that were largely implemented in the amended rules, including the revision of the DNR Order Form and DNR protocol. During the CSI public comment period, ODH received nine comments from stakeholders.

Several stakeholders submitted comments that addressed the issuance of additional medical orders along with the DNR Order. ODH responded that additional medical orders are allowable and can be made at the discretion of the care provider, but are not provided the same immunity as the provisions within the DNR Order and do not have to be accepted by other providers. Several stakeholders suggested clarification to the rules regarding intubation and care levels. ODH

responded to the comment by directing the stakeholder to the changes being made to the DNR Order Form, as well as ensuring the stakeholder that appropriate training will be implemented. Several stakeholders suggested changes to inconsistent language in the proposed rules and appendices. ODH fixed the inconsistencies in updated drafts. One stakeholder suggested that the use of Drug Enforcement Agency Registration Numbers on DNR Order Forms could present problems for prescribers. ODH stated that there are multiple types of identifiers that may be used on the DNR Order Form, including a National Provider Identifier or license number. One stakeholder suggested implementing Medical Orders for Life-Sustaining Treatment initiatives, electronic files for EMS providers, and changes throughout the rules. ODH stated that many of the suggested changes are unable to be implemented at this time due to statutory authority and offered appropriate clarification. One stakeholder suggested requiring EMS workers to search patients for DNR identification when practicable and addressed the revocation of DNR orders by providers. ODH replied to these comments by clarifying that searching for DNR identification is currently part of medical practice and that revocation by a provider only pertains to DNR orders issued by the provider and not orders requested by patients. One stakeholder suggested changes regarding patient records and updates to language within the rules. ODH made changes to the medical care provision language based on these comments. Another stakeholder suggested clarification regarding living will declarations, power of attorney, and EMS compliance with DNR Orders against family and bystander requests. ODH responded appropriately to these questions and provided clarification. One stakeholder suggested changes that would allow EMS providers to accept DNR orders from medical personnel other than licensed physicians under statute. ODH acknowledged that separate statutes are not in alignment and that changes to Ohio Department of Public Safety statutes would be required to make changes.

The business community impacted by these rules includes healthcare facilities and medical personnel. The adverse cost created by the rules includes the time and effort spent by medical staff preparing DNR Orders and following DNR protocol. ODH states in the BIA that the rules fulfill the statutory duty to provide guidelines for the withholding of CPR in ways that respect patient wishes and provide consistency for medical personnel and facilities. After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendations

For the reasons described above, the CSI Office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Health should proceed in filing the proposed rules with the Joint Committee on

Agency Rule Review.