



Common Sense Initiative

Mike DeWine, Governor

Joseph Baker, Director

MEMORANDUM

TO: Olivia Igel, Ohio Department of Health
Cole Weidman, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 14, 2025

RE: **CSI Review – Do-Not-Resuscitate (DNR) Protocol (OAC 3701-62-01, 3701-62-02, 3701-62-03, 3701-62-04, 3701-62-05, 3701-62-06, 3701-62-07, 3701-62-08, 3701-62-09, 3701-62-10, 3701-62-11, 3701-62-12, 3701-62-13, and 3701-62-14)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of ten amended rules and four no-change rules proposed by the Ohio Department of Health (ODH) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on November 12, 2024, and the public comment period was held open through December 12, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 12, 2024.

Ohio Administrative Code (OAC) Chapter 3701-62 establish the do-not-resuscitate (DNR) order and protocol. The amended rules contain revisions that primarily update language, grammar, and citations. OAC 3701-62-01 contains definitions for terms pertaining to the DNR order and protocol. OAC 3701-62-02 establishes the authority and immunity of advanced practice registered nurses (APRNs) and physician assistants (PAs) with respect to DNR orders. Originally submitted as an amended rule, the rule is now proposed without changes. OAC 3701-62-03 provides immunity from

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criminal, civil, and professional actions to health care workers and emergency medical services (EMS) personnel who withhold or withdraw cardiopulmonary resuscitation (CPR) from a patient with a valid DNR order. OAC 3701-62-04 outlines the items that are approved as DNR identification and explains how they can be obtained. Four appendices are also provided. Appendix A provides a copy of the Ohio DNR order form and is revised to update language, reorganize the formatting, and remove the requirement for a physician's signature in addition to an APRN's or PA's. Appendix B depicts the hospital-type DNR bracelet insert. Appendix C presents the DNR comfort care logo. Appendix D shows the DNR comfort care wallet identification card. OAC 3701-62-05 establishes the DNR protocol and describes when it takes effect. An appendix to the rule is also provided. Appendix A constitutes the DNR protocol for the state of Ohio. OAC 3701-62-06 provides for the revocation of DNR identification or a DNR order.

OAC 3701-62-07 describes the proper way for EMS personnel to follow the DNR protocol. OAC 3701-62-08 prohibits an attending physician, APRN, PA, or health care facility that is unwilling or unable to comply with the DNR protocol for an individual who possesses DNR identification from preventing or delaying the transfer of the individual to a different physician, APRN, PA, or health care facility where the protocol will be followed. OAC 3701-62-09 sets forth the responsibilities of a health care facility when transferring to another health care facility an individual who possesses DNR identification or has been issued a DNR order. OAC 3701-62-10 explains when DNR identification based upon a valid order does and does not take effect in situations where there may be conflicts between living will declarations and durable powers of attorney for health care. The rule is proposed without changes. OAC 3701-62-11 declares that the death of an individual from the withholding or withdrawal of CPR pursuant to the DNR protocol does not constitute homicide or suicide. The rule is proposed without changes. OAC 3701-62-12 describes the effect of DNR identification or a DNR order on insurance. OAC 3701-62-13 establishes the rights of an individual concerning DNR identification and orders as they pertain to informed consent and living will declarations. The rule is proposed without changes. OAC 3701-62-14 lists prohibited actions related to DNR identification or orders.

During early stakeholder outreach, ODH held two in-person stakeholder meetings to discuss the five-year review of OAC Chapter 3701-62. The first meeting was held on January 24, 2024, while the second meeting occurred May 14, 2024. Additionally, ODH conducted phone calls and communicated by email with stakeholders through September 2024. Stakeholders who engaged ODH included the Ohio Council for Home Care and Hospice, the Ohio Office of the State Long-Term Care Ombudsman, the Ohio Department of Aging, the Ohio Department of Public Safety, the Ohio Department of Developmental Disabilities, the Ohio Department of Medicaid, the Ohio Adjutant General's Office, the State Medical Board of Ohio, the Ohio Board of Nursing, City of Cincinnati EMS, City of Dayton EMS, the Ohio Hospital Association, the Ohio Nurses Association, the Ohio State Bar Association, the Ohio Osteopathic Association Ohio State University Wexner Medical

Center (OSUWMC), the Palliative Care Council, MedFlight, MedCare, LeadingAge Ohio (LeadingAge), the Hospice Alliance of Ohio, Lamusga Law, OhioHealth, the Cleveland Clinic, Hospice of Dayton, Greater Columbus Right to Life, TriHealth, Mercy Health (Mercy), the Ohio Chapter of the American College of Emergency Physicians (Ohio ACEP), the Bioethics Network of Ohio, and Nationwide Children's Hospital. The revisions to the DNR protocol and Ohio DNR order form are the direct results of ODH's communications with stakeholders.

During the CSI public comment period, ODH received nineteen total comments, including those from individuals affiliated with OSUWMC, Ohio ACEP, LeadingAge, TriHealth, Mercy, Summa Health, the University of Cincinnati, Grant Medical Center, Mid-County EMS, and the City of Dayton Fire Department. A few of the comments expressed support for the proposed rule changes. Many commenters considered the differentiation between the DNR Comfort Care and DNR Comfort Care – Arrest orders to be confusing. ODH explained that Ohio has two types of DNR orders by law and that discussion of the DNR protocol between a patient and the patient's representative when completing a DNR form is crucial to understanding how the form is utilized by health care providers. A number of commenters urged ODH to address the issue of "do not intubate" in the DNR protocol. ODH replied that it does not have the statutory authority to use "do not intubate" as an option on the DNR form. Similarly, a couple commenters asked ODH to recognize a physician orders for life-sustaining treatment (POLST) form or medical orders for life-sustaining treatment (MOLST) form, but ODH explained that Ohio law does not allow for POLST or MOLST forms either. ODH denied other suggestions for altering the DNR protocol on the basis that they were prohibited or not authorized by statute. However, ODH made the signature of a patient or authorized representative signature on a DNR form optional again at the request of multiple commenters. ODH also answered questions for clarification and implemented several suggested technical and grammatical revisions to the rules.

The business community impacted by the rules includes all healthcare providers, particularly healthcare facilities, physicians, nurses, and EMS personnel. The adverse impacts created by the rules include the time and costs needed to complete the Ohio DNR order form and comply with the DNR protocol. According to ODH, citing the federal Bureau of Labor Statistics, the average hourly wages are \$130.31 for physicians, \$59.07 for nurses, and \$57.67 for PAs. Costs for completing an Ohio DNR order form are typically included as part of the fee charged by a providers for a standard office visit or consultation to an individual requesting the DNR order. ODH states that the adverse impacts to business are justified to implement statutory requirements and ensure that an individual's decisions regarding life-saving or life-sustaining measures are clearly expressed and recognized by healthcare personnel and providers.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.