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To: Interested Parties

From: Olivia Igel and Cole Weidman, Bureau of Regulatory Operations  
Ohio Department of Health

Subject: Five Year Rule Review of Ohio Administrative Code Rules 3701-62-01 to 3701-62-14 (“Do-Not-Resuscitate (DNR) Protocol”)

Date: November 12, 2024

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In accordance with Ohio Revised Code Section 119.04, the Ohio Department of Health (“ODH”) is conducting a five-year rule review of Ohio Administrative Code rules 3701-62-01 to 3701-62-14 (“Do-Not-Resuscitate (DNR) Protocol”). 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.

ODH is proposing to amend the rules as follows:

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”. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and the definition change of “hospital” as part of the definition of “Health care facility” is now defined in section 3722.01 of the ORC.

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.

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### 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly. Appendix A to this rule is the State of Ohio DNR Order form. The form is being revised to:

- Remove the requirement for a physician's signature in addition to an APRN and PA's to match current revised code of ORC 2133.211.
- Reorganizing of language which includes moving language from the bottom of the form to the top of the form that restricts writing any other medical orders than what's on the form. Stakeholders requested this as this was an identified issue and doing so will be easier to identify for providers.
- Updating language to allow for clear language for providers and patients filling out the form.

### 3701-62-05

The rule establishes the DNR Protocol and when it becomes effective. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly. The appendix to this rule establishes the DNR Protocol.

### 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 will issue 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

### 3701-62-07

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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

### 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

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### 3701-62-09

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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

### 3701-62-10

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, in which the more recent document supersedes.

### 3701-62-11

The rule establishes that the death of a person resulting from the withholding or withdrawal of CPR for a person with a valid DNR does not constitute suicide, aggravated murder, murder, or any other homicide.

### 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 because 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 on and after July 9, 1998, will not be impacted by an individual's choice to have a DNR. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

### 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 if 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.

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3701-62-14

The rule sets forth the prohibitions pertaining to a DNR Order and DNR identification. The rule prohibits a physician, APRN, or PA 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

**Please review the draft amended rules and provide any comments you may have by December 12, 2024,** to the address below. Please include the words “Do Not Resuscitate” in the subject line of all comments sent via regular mail or e-mail. ODH will review and consider the comments received before the rule is submitted for formal rule proposal and adoption proceedings. Thank you.

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## 3701-62-01 Definitions.

As used in this chapter, unless the context clearly ~~requires~~states otherwise:

- (A) "Authorized health care provider" means a health care provider that is authorized to sign a do-not-resuscitate order form for a person and is limited to the person's:
  - (1) Attending physician as defined in paragraph (C) of this rule;
  - (2) Advanced practice registered nurse as defined in paragraph (B) of this rule and the action is taken by:
    - (a) A certified nurse practitioner, certified nurse midwife, or clinical nurse specialist pursuant to a standard care arrangement with a collaborating physician; or
    - (b) A certified registered nurse anesthetist under the supervision and direction of a physician.
  - (3) Physician assistant as defined in paragraph (U) of this rule and the action is taken pursuant to a supervision agreement with a supervising physician pursuant to section 4730.19 of the Revised Code or the policies of a health care facility in which the PA is working.
- (B) "Advanced practice registered nurse" or "APRN" means a licensed registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner as provided in division (O) of section 4723.01 of the Revised Code.
- (C) "Attending physician" means the physician to whom a person, or the family of a person, has assigned primary responsibility for the treatment or care of the person or, if the person or the person's family has not assigned that responsibility, the physician who has accepted that responsibility.
- (D) "Cardiac arrest" means the loss of discernible audible and palpable pulse, with or without the loss of cardiac action/rhythm if on a cardiac monitor, or the sudden abrupt loss of heart function.
- (E) "Comfort care" means any of the following:
  - (1) Nutrition when administered to diminish the pain or discomfort of a declarant or other patient, but not to postpone the declarant's or other patient's death;
  - (2) Hydration when administered to diminish the pain or discomfort of a declarant or other patient, but not to postpone the declarant's or other patient's death;
  - (3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish the pain or discomfort of a declarant or other patient, but not to postpone the declarant's or other patient's death.
- (F) "CNP" means an advanced practice registered nurse who holds a current, valid license issued by the board of nursing under Chapter 4723. of the Revised Code and is designated as a certified nurse practitioner in accordance with section 4723.42 of the Revised Code and the rules adopted by the board of nursing.
- (G) "Certified nurse-midwife" means an advanced practice registered nurse who holds a current, valid license issued by the board of nursing under Chapter 4723. of the Revised Code and is designated as a certified nurse midwife in accordance with section 4723.42 of the Revised Code and the rules adopted by the board of nursing.

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- (H) "CNS" means an advanced practice registered nurse who holds a current, valid license issued under Chapter 4723. of the Revised Code and is designated as a clinical nurse specialist in accordance with section 4723.42 of the Revised Code and the rules adopted by the board of nursing.
- (I) "Certified registered nurse anesthetist" means an advanced practice registered nurse who holds a current, valid license issued by the board of nursing under Chapter 4723. of the Revised Code and is designated as a certified registered nurse anesthetist in accordance with section 4723.42 of the Revised Code and rules adopted by the board of nursing.
- (J) "CPR" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, but it does not include clearing a person's airway for a purpose other than as a component of CPR. "Component of CPR" means any of the following:
- (1) Administration of chest compressions;
  - (2) Insertion of an artificial airway;
  - (3) Administration of resuscitation drugs;
  - (4) Defibrillation or cardioversion;
  - (5) Provision of respiratory assistance;
  - (6) Initiation of a resuscitative intravenous line; and
  - (7) Initiation of cardiac monitoring.
- (K) "Declarant" means any adult who has executed a living will declaration in accordance with section 2133.02 of the Revised Code.
- (L) "Declaration" or "living will declaration" means a written document executed in accordance with section 2133.02 of the Revised Code.
- (M) "Do-not-resuscitate identification" or "DNR identification" means a standardized identification card, the DNR order form, necklace, or bracelet that has been approved by the department of health pursuant to section 2133.25 of the Revised Code and listed in rule 3701-62-04 of the Administrative Code, and that signifies either of the following:
- (1) That the person who is named on and possesses the card, DNR order form, necklace, or bracelet has executed a declaration that authorizes the withholding or withdrawal of CPR and that has not been revoked pursuant to section 2133.04 of the Revised Code; or
  - (2) That the authorized health care provider of the person who is named on and possesses the card, DNR order form, necklace, or bracelet has issued a current do-not-resuscitate order, in accordance with the do-not-resuscitate protocol adopted by the department of health pursuant to section 2133.25 of the Revised Code, for that person and has documented the grounds for the order in that person's medical record.
- (N) "Do-not-resuscitate order" or "DNR order" means a directive issued by an authorized health care provider, that identifies a person and specifies that CPR should not be administered to the person so identified. The do-not-resuscitate-order ~~shall~~will be implemented in accordance with the do-not-resuscitate protocol.

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- (O) "Do-not-resuscitate protocol" or "DNR protocol" means the standardized method of procedure for the withholding of CPR by physicians, APRNs as provided in rule 3701-62-02 of the Administrative Code, physician assistants as provided in rule 3701-62-02 of the Administrative Code, emergency medical service personnel, and health care facilities that is adopted in the rules of the department of health pursuant to section 2133.25 of the Revised Code. The do-not-resuscitate protocol is specified in rule 3701-62-05 of the Administrative Code. Treatment other than resuscitative, ~~shall~~will continue to be provided or modified as the individual's condition warrants, in keeping with the individual's treatment plan goals.
- (P) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession.
- (Q) "Health care facility" means any of the following:
- (1) A hospital as defined in section ~~2108.01, 3701.01, or 5122.01~~3722.01 of the Revised Code;
  - (2) A hospice care program, as defined in section 3712.01 of the Revised Code, or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state;
  - (3) A nursing home or residential care facility, as defined in section 3721.01 of the Revised Code;
  - (4) A home health agency, as defined in section 3701.881 of the Revised Code, and any residential facility where a person is receiving care under the direction of a home health agency; and
  - (5) An intermediate care facility for the individuals with intellectual disabilities (ICF/IID).
- (R) "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying.
- (S) "Permanently unconscious state" means a state of permanent unconsciousness in a declarant or other patient that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, is characterized by both of the following:
- (1) Irreversible unawareness of one's being and environment; and
  - (2) Total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering.
- (T) "Physician" means a person who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.
- (U) "Physician assistant" or "PA" means a person who holds a license to practice as a physician assistant issued under Chapter 4730. of the Revised Code.
- (V) "Principal" means a person who has executed a durable power of attorney for health care under sections 1337.11 to 1337.17 of the Revised Code.

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- (W) "Professional disciplinary action" means action taken by the board or other entity that regulates the professional conduct of health care personnel, including but not limited to the state medical board, the board of nursing, and the state board of emergency medical, fire, and transportation services.
- (X) "Respiratory arrest" means absence of spontaneous respirations or the presence of agonal breathing.
- (Y) "Standard care arrangement" has the same meaning as defined in division (N) of section 4723.01 of the Revised Code.
- (Z) "Terminal condition" means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, both of the following apply:
- (1) There can be no recovery; and
  - (2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.
- (AA) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for breach of a contract or another agreement between persons.



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**3701-62-02 Authority of advanced practice registered nurses and physician assistants.**

- (A) A person who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as an advanced practice registered nurse may take any action that may be taken by an attending physician under sections 2133.21 to 2133.26 of the Revised Code and this chapter ~~and~~ has the immunity provided by section 2133.22 of the Revised Code and rule 3701-62-03 of the Administrative Code if the action is taken pursuant to a standard care arrangement with a collaborating physician or, if the APRN is a certified registered nurse anesthetist, under the supervision and direction of a physician.
- (B) A person who holds a license to practice as a physician assistant pursuant to Chapter 4730. of the Revised Code may take any action that may be taken by an attending physician under sections 2133.21 to 2133.26 of the Revised Code and this chapter ~~and~~ has the immunity provided by section 2133.22 of the Revised Code and rule 3701-62-03 of the Administrative Code if the action is taken pursuant to a supervision agreement with a supervising physician pursuant to section 4730.19 of the Revised Code or the policies of a health care facility in which the PA is working.

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**3701-62-03 Immunity from criminal prosecution, civil liability, and professional disciplinary action.**

(A) Persons with DNR identification:

- (1) None of the persons listed in paragraph (A)(2) of this rule are subject to any of the following arising out of or relating to the withholding or withdrawal of CPR from a person after DNR identification is discovered in the person's possession and reasonable efforts have been made to determine that the person in possession of the DNR identification is the person named on the DNR identification:
  - (a) Criminal prosecution;
  - (b) Liability in damages in a tort or other civil action for injury, death, or loss to person or property; or
  - (c) Professional disciplinary action.
- (2) The immunity described in paragraph (A)(1) of this rule attaches to the following persons:
  - (a) An authorized health care provider, who causes the withholding or withdrawal of CPR from the person possessing the DNR identification;
  - (b) A person who participates under the direction of or with the authorization of an authorized health care provider, in the withholding or withdrawal of CPR from the person possessing the DNR identification; or
  - (c) Any emergency medical services personnel who cause or participate in the withholding or withdrawal of CPR from the person possessing the DNR identification.
- (3) Paragraph (A) of this rule does not apply when CPR is withheld or withdrawn from a person who possesses DNR identification or for whom a do-not-resuscitate order has been issued unless the withholding or withdrawal is in accordance with the do-not-resuscitate protocol.

(B) Persons in health care facilities:

- (1) None of the persons listed in paragraph (B)(2) of this rule are subject to any of the following arising out of or relating to the withholding or withdrawal of CPR from a person in a health care facility after DNR identification is discovered in the person's possession and reasonable efforts have been made to determine that the person in possession of the DNR identification is the person named on the DNR identification or a do-not-resuscitate order is issued for the person:
  - (a) Criminal prosecution;
  - (b) Liability in damages in a tort or other civil action for injury, death, or loss to person or property; or
  - (c) Professional disciplinary action.
- (2) The immunity described in paragraph (B)(1) of this rule attaches to the following persons:
  - (a) The health care facility or the administrator of the health care facility;
  - (b) An authorized health care provider, who causes the withholding or withdrawal of CPR from the person possessing the DNR identification or for whom the do-not-resuscitate order has been issued;

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- (c) Any person who works for the health care facility as an employee, contractor, or volunteer and who participates under the direction of or with the authorization of, an authorized health care provider, in the withholding or withdrawal of CPR from the person possessing the DNR identification;
  - (d) Any person who works for the health care facility as an employee, contractor, or volunteer and who participates under the direction of or with the authorization of an authorized health care provider, in the withholding or withdrawal of CPR from the person for whom the do-not-resuscitate order has been issued; and
  - (e) Any emergency medical services personnel who cause or participate in the withholding or withdrawal of CPR from the person possessing the DNR identification.
- (3) Paragraph (B) of this rule does not apply when CPR is withheld or withdrawn from a person who possesses DNR identification or for whom a do-not-resuscitate order has been issued unless the withholding or withdrawal is in accordance with the do-not-resuscitate protocol.
- (C) For the purposes of paragraphs (A) and (B) of this rule, information that may be used to determine if the person in possession of DNR identification is the person named on the DNR identification include but are not limited to the following:
- (1) Verification of the person's identity by the person or a family member, friend, or caregiver;
  - (2) Personal knowledge of the person by the emergency medical services personnel, physician, APRN, PA, or person working for a health care facility;
  - (3) Health care facility identification band;
  - (4) Driver's license;
  - (5) Passport; or
  - (6) Other identification bearing the person's name and photograph.
- (D) Request for CPR by person with DNR identification. If, after DNR identification is discovered in the possession of a person, the person makes an oral or written request to receive CPR, any person who provides CPR pursuant to the request, any health care facility in which CPR is provided, and the administrator of any health care facility in which CPR is provided are not subject to any of the following:
- (1) Criminal prosecution as a result of the provision of the CPR;
  - (2) Liability in damages in a tort or other civil action for injury, death, or loss to person or property that arises out of or is related to the provision of the CPR; or
  - (3) Professional disciplinary action as a result of the provision of the CPR.
- (E) Do-not-resuscitate orders:
- (1) None of the persons listed in paragraph (E)(2) of this rule who comply with a do-not-resuscitate order issued by an authorized health care provider are subject to any of the following:
    - (a) Liability in damages in a civil action for injury, death, or loss to person or property that arises out of or is related to compliance with the order;

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(b) Criminal prosecution as a result of compliance with the order; or

(c) Professional disciplinary action as a result of compliance with the order.

(2) The immunity described in paragraph (E)(1) of this rule attaches to the following persons:

(a) Any emergency medical services personnel who comply with a do-not-resuscitate order issued by an authorized health care provider; and

(b) Any individuals who work for a health care facility as employees, contractors, or volunteers and who comply with a do-not-resuscitate order issued by an authorized health care provider.

(3) Paragraph (E) of this rule does not apply when CPR is withheld or withdrawn from a person who possesses DNR identification or for whom a do-not-resuscitate order has been issued unless the withholding or withdrawal is in accordance with the do-not-resuscitate protocol.

(F) Emergency situations:

(1) In an emergency situation, emergency medical services personnel and emergency department personnel are not required to search a person to determine if the person possesses DNR identification;

(2) If a person possesses DNR identification, ~~if~~ and emergency medical services personnel or emergency department personnel provide CPR to the person in an emergency situation, and if, at that time, the personnel do not know and do not have reasonable cause to believe that the person possesses DNR identification, the emergency medical services personnel and emergency department personnel are not subject to any of the following:

(a) Criminal prosecution as a result of the provision of the CPR;

(b) Liability in damages in a tort or other civil action for injury, death, or loss to person or property that arises out of or is related to the provision of the CPR; or

(c) Professional disciplinary action as a result of the provision of the CPR.

(G) Nothing in sections 2133.21 to 2133.26 of the Revised Code, this rule, or the do-not-resuscitate protocol grants immunity to an authorized health care provider for issuing a do-not-resuscitate order that is contrary to reasonable medical standards or that the authorized health care provider knows or has reason to know is contrary to the wishes of the patient or of a person who is lawfully authorized to make informed medical decisions on the patient's behalf.

(H) Pursuant to paragraphs (B) and (C) of rule 3701-62-13 of the Administrative Code, neither paragraph (G) of this rule nor any other provision of this chapter requires provision of CPR to a person if, in the judgment of the authorized health care provider, CPR would be futile, or if the person or another person lawfully authorized to make decisions on behalf of the person declines CPR.

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**3701-62-04 Do-not-resuscitate identification.**

(A) The following items are approved as DNR identification:

- (1) A do-not-resuscitate order documented on the state of Ohio DNR order form depicted in appendix A to this rule. This form may be reproduced as needed;
- (2) A copy of an individual's living will declaration that includes language that authorizes the withholding or withdrawal of CPR that has not been revoked pursuant to section 2133.04 of the Revised Code and that the declaration has become operative in accordance with section 2133.03 of the Revised Code;
- (3) A transparent hospital-type bracelet with an insert containing the logo and the individual's identifying information as depicted in appendix B to this rule;
- (4) A necklace bearing both the logo depicted in appendix C to this rule and the person's name. If the person is a "DNR Comfort Care - Arrest" patient as specified in rule 3701-62-05 of the Administrative Code, the necklace ~~shall~~will also include the word "arrest";
- (5) A bracelet bearing both the logo depicted in appendix C to this rule and the person's name. If the person is a "DNR Comfort Care - Arrest" patient as specified in rule 3701-62-05 of the Administrative Code, the bracelet ~~shall~~will also include the word "arrest";
- (6) A wallet card bearing the logo and the individual's identifying information as depicted in appendix D to this rule. This card may be reproduced as needed; and
- (7) A printed form of a living will declaration sold or otherwise distributed in accordance with section 2133.07 of the Revised Code, if the declarant specifies on the form that the declarant wishes to use it as DNR identification.

(B) A person is eligible to obtain DNR identification if either of the following circumstances exist:

- (1) The person has executed a living will declaration that authorizes the withholding or withdrawal of CPR and that has not been revoked pursuant to section 2133.04 of the Revised Code, and the declaration has become operative in accordance with section 2133.03 of the Revised Code; or
- (2) The person's authorized health care provider, has issued a current do-not-resuscitate order, in accordance with the do-not-resuscitate protocol specified in rule 3701-62-05 of the Administrative Code, for that person, and has documented the grounds for the order in that person's medical record. The do-not-resuscitate order itself, or copies of that order, may be used as DNR identification if it is documented on the form depicted in appendix A to this rule.

(C) A person may obtain DNR identification in the following manner:

- (1) In the case of the form specified in paragraph (A)(1) of this rule, by obtaining a copy of the form from a physician, APRN, PA, or health care facility and completing the form in conjunction with the person's authorized health care provider.
- (2) In the case of the wallet card specified in paragraph (A)(6) of this rule, by doing both of the following:
  - (a) Obtaining both the DNR order form specified in paragraph (A)(1) of this rule and the wallet card from a physician, APRN, PA, or health care facility; and

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- (b) Completing both the DNR order form and card in conjunction with the person's authorized health care provider.
- (3) In the case of the hospital-type bracelet specified in paragraph (A)(3) of this rule, by doing both of the following:
  - (a) Obtaining a DNR order from the person's authorized health care provider; and
  - (b) Acquiring a bracelet containing a completed insert bearing the logo and identifying information from an authorized health care provider, health care facility, or pharmacy. The physician, authorized health care provider, facility, or pharmacy ~~shall~~will not issue a bracelet to the person unless the person presents a DNR order form.
- (4) In the case of the necklace specified in paragraph (A)(4) of this rule and the bracelet specified in paragraph (A)(5) of this rule, by doing both of the following:
  - (a) Obtaining a DNR order from the person's authorized health care provider; and
  - (b) Acquiring a necklace or bracelet bearing both the logo depicted in appendix C to this rule and the person's name, from a person or government entity that manufactures or distributes it. The order for the necklace or bracelet ~~shall~~will be accompanied by a copy of the DNR order form.
- (5) In the case of a living will declaration form specified in paragraph (A)(7) of this rule, by obtaining and completing the form in the manner required by sections 2133.01 to 2133.15 of the Revised Code and specifying on the form that the declarant wishes to use it as DNR identification. If the declarant wishes to be a "DNR Comfort Care - Arrest" patient, as specified in rule 3701-62-05 of the Administrative Code, the declarant ~~shall~~will include a statement in the living will declaration that in the event of a cardiac arrest or a respiratory arrest, the declarant is not to receive CPR.
- (D) A do-not-resuscitate order documented on the DNR order form depicted in appendix A to this rule ~~shall~~will not be altered or modified in any way, including not being written upon to provide instructions or directions for the individual's care. Any medical orders, instructions, or information, other than those required elements of the form itself, that are written on an authorized do-not-resuscitate order form are not transportable and are not provided protections or immunities under this chapter.

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**3701-62-05 Do-not-resuscitate protocol.**

- (A) The appendix to this rule ~~shall~~will constitute the do-not-resuscitate protocol for the state of Ohio.
- (B) Under the protocol, a person can be a "DNR Comfort Care" patient or a "DNR Comfort Care - Arrest" patient. The DNR protocol is activated:
- (1) For a "DNR Comfort Care" patient when:
    - (a) A DNR order is issued; or
    - (b) A living will declaration that includes a directive that the declarant not receive CPR becomes operative under section 2133.03 of the Revised Code.
  - (2) For a "DNR Comfort Care - Arrest" patient, when the patient experiences cardiac or respiratory arrest as defined in paragraphs (D) and (X) of rule 3701-62-01 of the Administrative Code.
- (C) A "DNR Comfort Care" or "DNR Comfort Care - Arrest" patient is identified by:
- (1) The appropriate identification on the patient's DNR order form;
  - (2) DNR identification, as specified in rule 3701-62-04 of the Administrative Code; or
  - (3) If the patient does not have DNR identification, documentation in the patient's medical record by an authorized health care provider, that in the event of a cardiac arrest or a respiratory arrest, the patient is not to receive CPR, or that the individual wants comfort care only. This documentation is only acceptable within the confines of the health care facility in which the medical record is maintained. If the individual is discharged or transferred to another health care facility and the patient or patient's representative elects to continue the DNR status, a state of Ohio DNR order form ~~must~~will be completed for the patient in accordance with rule 3701-62-09 of the Administrative Code.



A printed copy of this order form or other authorized DNR identification must accompany the patient during transports and transfers between facilities.

Any medical orders, instructions, or information other than the those required elements of the form itself, that are written on this order form are not transportable and are not provided protections or immunities.

Patient Name:	Patient Birth Date:
Patient or Authorized Representatives Signature	
Printed name of Physician, APRN or PA*	Date
<b>REQUIRED</b> Signature of Physician, APRN or PA	Phone

**CHECK ONLY ONE BOX BELOW**

**DNR Comfort Care — Arrest:** Providers will treat patients as any other patient without a DNR order until the point of cardiac or respiratory arrest at which point all interventions will cease and the DNR Comfort Care protocol will be implemented.

**DNR Comfort Care:** The following DNR protocol is effective immediately:

**DNR PROTOCOL**

<p><b>Providers Will:</b></p> <ul style="list-style-type: none"> <li>• Conduct an initial assessment</li> <li>• Perform basic medical care</li> <li>• Clear airway of obstruction or suction</li> <li>• If necessary for comfort or to relieve distress, may administer oxygen, CPAP or BiPAP</li> <li>• If necessary, may obtain IV access for hydration or pain medication to relieve discomfort, but not to prolong death</li> <li>• If possible, may contact other appropriate health care providers (hospice, home health, physician, APRN or PA)</li> </ul>	<p><b>Providers Will Not:</b></p> <ul style="list-style-type: none"> <li>• Perform CPR</li> <li>• Administer resuscitation medications with the intent of restarting the heart or breathing</li> <li>• Insert an airway adjunct</li> <li>• De-fibrillate, cardiovert or initiate pacing</li> <li>• Initiate continuous cardiac monitoring</li> </ul>
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Physicians, emergency medical services personnel, and persons acting under the direction of or with the authorization of a physician, APRN or PA who participate in the withholding or withdrawal of CPR from the person possessing the DNR identification are provided immunities **under section 2133.22 of the Revised Code**. This DNR order is effective until revoked.

\* A DNR may be issued by an Advanced Practice Registered Nurse (APRN) or Physician Assistant (PA) when authorized by section 2133.211 of the Ohio Revised Code.  
HEA 1930 Revised 09/16/2024



**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**3701-62-06 Revocation of DNR identification or DNR order.**

- (A) A person with DNR identification or a DNR order may revoke ~~his or her~~their DNR status by an oral or written request to receive CPR.
- (B) A person with DNR identification may revoke ~~his or her~~their DNR identification by doing any of the following:
- (1) In the case of a form or wallet card listed in paragraph (A)(1), or (A)(6) of rule 3701-62-04 of the Administrative Code, by destroying the DNR order form or wallet card;
  - (2) In the case of a bracelet or necklace as listed in paragraphs (A)(3), (A)(4), or (A)(5) of rule 3701-62-04 of the Administrative Code, by permanently removing the bracelet or necklace; or
  - (3) In the case of a living will declaration or printed form of a living will declaration listed in paragraph (A)(7) of rule 3701-64-04 of the Administrative Code that includes a specification that the declarant wishes to use it as DNR identification, by revoking the declaration in accordance with section 2133.04 of the Revised Code.
- (C) The authorized health care provider of a person with a DNR order may revoke the DNR order by issuing an order discontinuing the DNR order. If DNR identification was issued on the basis of the DNR order, any revocation of the DNR identification ~~shall~~will be accomplished under paragraph (B) of this rule.
- (D) If an authorized health care provider issues an order discontinuing a valid DNR order in accordance with paragraph (B) or (C) of this rule, the authorized health care provider ~~shall~~will ask the patient of the health care facility prior to discharge or transfer whether ~~he or she~~they ~~wishes~~wish to make another DNR declaration in accordance with section 2133.02 of the Revised Code.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**3701-62-07      Emergency medical services personnel; compliance with DNR protocol.**

- (A) If emergency medical services personnel, other than physicians, are presented with DNR identification possessed by a person, or are presented with a written do-not-resuscitate order for a person, or if an authorized health care provider directly issues an oral do-not-resuscitate order for a person to emergency medical services personnel other than physicians, the emergency medical services personnel ~~shall~~will comply with the do-not-resuscitate protocol for the person.
- (B) If an oral do-not-resuscitate order is issued by an authorized health care provider, who is not present at the scene, the emergency medical services personnel ~~shall~~will verify the authorized health care provider's identity. Methods of verification include but are not limited to the following:
- (1) Personal knowledge of the authorized health care provider by emergency medical services personnel;
  - (2) A list of authorized health care providers with other identifying information such as addresses; or
  - (3) A return telephone call to verify information provided.
- (C) In an emergency situation, emergency medical services personnel and emergency department personnel are not required to search a person to determine if the person possesses DNR identification.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**3701-62-08      Attending physician, PA, APRN, or health care facility unwilling or unable to comply with DNR protocol.**

If a person possesses DNR identification and if the person's attending physician, APRN, PA, or the health care facility in which the person is located is unwilling or unable to comply with the do-not-resuscitate protocol for the person, the attending physician, APRN, PA, or the health care facility ~~shall~~will not prevent or attempt to prevent, or unreasonably delay or attempt to delay, the transfer of the person to a different physician, APRN, or PA who will follow the protocol or to a different health care facility in which the protocol will be followed.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**3701-62-09 Transfer of person between health care facilities: forwarding of DNR order.**

- (A) If a person who possesses DNR identification or for whom a current do-not-resuscitate order issued by an authorized health care provider has been issued is being transferred from one health care facility to another, before or at the time of the transfer, the transferring health care facility **shallwill**:
- (1) Notify the receiving health care facility of the existence of the DNR identification or the current do-not-resuscitate order issued by an authorized health care provider; and
  - (2) Notify the persons transporting the person, including, emergency medical services, private ambulance services, or other patient transport services, of the existence of the DNR identification or the current do-not-resuscitate order issued by an authorized health care provider.
- (B) If a current do-not-resuscitate order was issued orally, it **shallwill** be reduced to writing through the completion of a state of Ohio DNR order form before the time of the transfer.
- (C) Health care facilities that provide treatment, services, or care to a person with a DNR **shallwill** ensure that one of the following accompany the person to the receiving facility:
- (1) An original or paper copy of the person's written state of Ohio DNR order form signed by an authorized health care provider; or
  - (2) DNR identification authorized in rule 3701-62-04 of the Administrative Code as follows:
    - (a) A bracelet or necklace bearing the logo as depicted in appendix C to rule 3701-62-04 of the Administrative Code and the person's name. The bracelet or necklace **shallwill** also include the word "arrest" if the person is a DNR comfort care-arrest;
    - (b) A transparent hospital-type bracelet with an insert containing the logo and identifying information as depicted in appendix B to rule 3701-63-04 of the Administrative Code;
    - (c) A wallet card bearing the logo and identifying information as depicted in appendix D to rule 3701-62-04 of the Administrative Code; or
    - (d) A copy of the person's living will declaration that includes language that authorizes the withholding or withdrawal of CPR that has not been revoked pursuant to section 2133.04 of the Revised Code and that the declaration has become operative in accordance with section 2133.03 of the Revised Code.
- (D) A person's DNR identification **shallwill** remain in effect until it is revoked in accordance with rule 3701-62-06 of the Administrative Code.

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**3701-62-10 Relationship of DNR orders and identification with living will declarations and durable powers of attorney for health care.**

- (A) To the extent that a known conflict exists between a valid durable power of attorney for health care and a valid living will declaration that is known to be operative in accordance with section 2133.03 of the Revised Code, the living will declaration supersedes the authority of the durable power of attorney for health care and the agent or agents named therein.
- (B) Absent substantial change in the principal's medical condition as assessed by the principal's authorized health care provider, DNR identification based upon a valid DNR order to which the principal consented supersedes the authority of a durable power of attorney for health care and the agent or agents named therein.
- (C) The authority of a durable power of attorney for health care and the agent or agents named therein supersedes DNR identification that is based upon a DNR order to which the agent or agents named in the durable power of attorney for health care previously consented or to which an individual or individuals consented to in accordance with section 2133.08 of the Revised Code.
- (D) To the extent that a known conflict exists between DNR identification based upon a previously executed living will declaration and a more recent valid living will declaration that is operative in accordance with section 2133.03 of the Revised Code, the most recent living will declaration supersedes the previous DNR identification and living will declaration.
- (E) 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.

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**3701-62-11 Compliance with DNR protocol not homicide or suicide.**

- (A) The death of a person resulting from the withholding or withdrawal of CPR for the person pursuant to the do-not-resuscitate protocol and in the circumstances described in section 2133.22 of the Revised Code and rule 3701-62-03 of the Administrative Code or in accordance with division (A) of section 2133.23 of the Revised Code and rule 3701-62-06 of the Administrative Code does not constitute for any purpose a suicide, aggravated murder, murder, or any other homicide.
- (B) Nothing in sections 2133.21 to 2133.26 of the Revised Code or this chapter condones, authorizes, or approves of mercy killing, assisted suicide, or euthanasia.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**3701-62-12 Effect of DNR identification or order on insurance.**

- (A) If a person possesses DNR identification or if a current do-not-resuscitate order has been issued for a person, the possession or order ~~shall~~will not do either of the following:
- (1) Affect in any manner the sale, procurement, issuance, or renewal of a policy of life insurance or annuity, notwithstanding any term of a policy or annuity to the contrary;
  - (2) Be deemed to modify in any manner or invalidate the terms of any policy of life insurance or annuity that is in effect on or after July 9, 1998.
- (B) Notwithstanding any term of a policy of life insurance or annuity to the contrary, the withholding or withdrawal of CPR from a person who is insured or covered under the policy or annuity and who possesses DNR identification or for whom a current do-not-resuscitate order has been issued, in accordance with sections 2133.21 to 2133.26 of the Revised Code and this chapter, ~~shall~~will not impair or invalidate any policy of life insurance or annuity.
- (C) Notwithstanding any term of a policy or plan to the contrary, neither of the following ~~shall~~will impair or invalidate any policy of health insurance or other health care benefit plan:
- (1) The withholding or withdrawal, in accordance with sections 2133.21 to 2133.26 of the Revised Code and this chapter, of CPR from a person who is insured or covered under the policy or plan and who possesses DNR identification or for whom a current do-not-resuscitate order has been issued;
  - (2) The provision, in accordance with sections 2133.21 to 2133.26 of the Revised Code and this chapter, of CPR to a person of the nature described in paragraph (C)(1) of this rule.
- (D) No physician, APRN, PA, 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 benefit plan, legal entity that is self-insured and provides benefits to its employees or members, or other person ~~shall~~will require an individual to possess DNR identification, or ~~shall~~will require an individual to revoke or refrain from possessing DNR identification, as a condition of being insured or of receiving health care benefits or services.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**3701-62-13 Individual rights not abrogated.**

- (A) Sections 2133.21 to 2133.26 of the Revised Code and this chapter do not create any presumption concerning the intent of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of CPR.
- (B) Sections 2133.21 to 2133.26 of the Revised Code and this chapter do not affect the right of a person to make informed decisions regarding the use, withholding, or withdrawal of CPR for the person as long as the person is able to make those decisions.
- (C) Sections 2133.21 to 2133.26 of the Revised Code and this chapter are in addition to and independent of, and do not limit, impair, or supersede, any right or responsibility that a person has to effect the withholding or withdrawal of life-sustaining treatment to another pursuant to sections 2133.01 to 2133.15 of the Revised Code or in any other lawful manner.
- (D) Pursuant to division (A)(1) of section 2133.02 of the Revised Code, a person's living will declaration may include a specific authorization for the use or continuation or the withholding or withdrawal of CPR, but the failure to include a specific authorization for the withholding or withdrawal of CPR does not preclude the withholding or withdrawal of CPR in accordance with sections 2133.01 to 2133.15 (pertaining to living will declarations) or sections 2133.21 to 2133.26 of the Revised Code (pertaining to DNR orders and identification).



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**3701-62-14 Prohibitions.**

- (A) No physician, APRN or PA shallwill purposely prevent or attempt to prevent, or delay or unreasonably attempt to delay, the transfer of a patient in violation of division (B) of section 2133.23 of the Revised Code and rule 3701-62-08 of the Administrative Code.
- (B) No person shallwill purposely conceal, cancel, deface, or obliterate the DNR identification of another person without the consent of the other person.
- (C) No person shallwill purposely falsify or forge a revocation of a declaration that is the basis of the DNR identification of another person or purposely falsify or forge an order of an authorized health care provider that purports to supersede a do-not-resuscitate order issued for another person.
- (D) No person shallwill purposely falsify or forge the DNR identification of another person with the intent to cause the use, withholding, or withdrawal of CPR for the other person.
- (E) No person who has personal knowledge that another person has revoked a declaration that is the basis of the other person's DNR identification or personal knowledge that an authorized health care provider has issued an order that supersedes a do-not-resuscitate order that the authorized health care provider issued for another person shallwill purposely conceal or withhold that personal knowledge with the intent to cause the use, withholding, or withdrawal of CPR for the other person.
- (F) No person shallwill purposely conceal, cancel, deface, or obliterate a valid DNR order of another person without the consent of the other person.
- (G) 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.



# Common Sense Initiative

Mike DeWine, *Governor*  
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Health

Rule Contact Name and Contact Information: Olivia Igel and Cole Weidman 614-995-5945

Regulation/Package Title (a general description of the rules' substantive content):  
Chapter 3701-62 Do-Not-Resuscitate (DNR) Protocol

Rule Number(s): 3701-62-01 through 3701-62-14

Date of Submission for CSI Review: 11/12/2024

Public Comment Period End Date: 12/12/2024

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ X rules (FYR? X)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

- 2. Please briefly describe the draft regulation in plain language.**

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.

ODH’s recommended new rules are set forth as follows:

#### 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”. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and the definition change of “hospital” as part of the definition of “Health care facility” is now defined in section 3722.01 of the ORC.

### 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.

### 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly. Appendix A to this rule is the State of Ohio DNR Order form. The form is being revised to:

- Remove the requirement for a physician's signature in addition to an APRN and PA's to match current revised code of ORC 2133.211.
- Reorganizing of language which includes moving language from the bottom of the form to the top of the form that restricts writing any other medical orders than what's on the form. Stakeholders requested this as this was an identified issue and doing so will be easier to identify for providers.
- Updating language to allow for clear language for providers and patients filling out the form.

### 3701-62-05

The rule establishes the DNR Protocol and when it becomes effective. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly. The appendix to this rule establishes the DNR Protocol.

### 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 will issue 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

3701-62-07

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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

3701-62-09

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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

3701-62-10

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, in which the more recent document supersedes.

3701-62-11

The rule establishes that the death of a person resulting from the withholding or withdrawal of CPR for a person with a valid DNR does not constitute suicide, aggravated murder, murder, or any other homicide.

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 because 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 on and after July 9, 1998, will not be impacted by an individual's choice to have a DNR. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

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 if 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.

3701-62-14

The rule sets forth the prohibitions pertaining to a DNR Order and DNR identification. The rule prohibits a physician, APRN, or PA 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. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

ORC § 2133.25

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

There are no federal requirements mandating these rules.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

As required by Ohio Revised Code 2133.25, these rules provide the necessary state-based framework for the Department of Health to provide a standardized method of procedure for the withholding of CPR by physicians, emergency medical services personnel, and health care facilities in the form of the DNR Order and Protocol. Through the DNR Order and DNR Protocol, ODH provides a standardized method to ensure that individual's decisions regarding lifesaving/sustaining measures are clearly expressed and recognized by health care personnel and providers.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The regulations set forth in Chapter 3701-62 of the Ohio Administrative Code are not directly measurable through the standard methods of survey utilized by ODH. ODH is required by statute to make the form available and establish rules, but enforcement of the requirements established in rule, such as the concealment, defacing, or destruction of a valid DNR Order of an individual by another person without consent are punishable as criminal offenses and would be prosecuted through local or state law enforcement. In the event that ODH received a complaint regarding one of its regulated facilities, programs, or services, ODH would investigate that complaint under the rules regulating the entity, which could result in a survey of the facility. Any violations identified by ODH would be referred to the Ohio Attorney General for further action or relief may be sought by individuals through their local courts. Thus, the "success" of the DNR rules could be determined through the review of related criminal cases in Ohio's courts and the number of complaints received regarding the DNR by the agency itself.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

Not applicable.

## **Development of the Regulation**

### **9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

The Ohio Department of Health (ODH) held two in-person stakeholder meetings to discuss the five-year review of Do-Not-Resuscitate (DNR) Protocol Chapter 3701-62 as well as phone calls and emails with stakeholders by executive leadership. The first in-person meeting was held on January 24<sup>th</sup>, 2024, and the second meeting was both in-person and virtual and was held on May 14<sup>th</sup>, 2024. Each session had participants from various stakeholders, including:

Ohio Council for Homecare and Hospice  
Ohio State Long-term Care Ombudsman  
Ohio Department of Aging  
Ohio Department of Public Safety  
Ohio Hospital Association  
Ohio Nurses Association  
Ohio State Bar Association  
Ohio State University Wexner Medical Center  
Palliative Care Council  
Ohio Adjutant General's Office  
Medflight  
Leading Age Ohio  
City of Cincinnati EMS  
City of Dayton EMS  
Hospice Alliance of Ohio  
Lamusga Law  
Ohio Department of Developmental Disabilities  
Ohio Health  
Cleveland Clinic  
Hospice of Dayton  
Ohio Osteopathic Association  
Ohio Medical Board  
Ohio Board of Nursing  
Greater Columbus Pro-Life  
MedCare Ohio  
TriHealth  
Mercy Health  
Ohio Chapter of the American College of Emergency Physicians  
Bioethics Network of Ohio  
Ohio Department of Medicaid  
Nationwide Children's Hospital



**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

In addition to in person stakeholder meetings, ongoing communication of the various stages of the draft rules occurred over the nine months from January 2024 to September 2024 and involved all the identified stakeholders throughout the process. Revisions to the DNR Protocol and Ohio DNR Order form are direct results of communications with stakeholders. Due to a lack of consensus on the Ohio DNR Order form, no substantive changes were made, and only necessary items were changed such as the removal of a physician's signature in addition to an APRN or PA's signature, and the reorganizing of language from the bottom of the form to the top to avoid an identified issue in meetings of the providers writing other medical orders other than what's on the form.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The Ohio Department of Health is required to adopt and maintain a standardized method of procedure for the withholding of CPR by health care practitioners and facilities by section 2133.25 of the Revised Code. Alternative regulations to the rules being amended were not considered. The rules reflect the current statutory requirements.

**13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code.

**14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

ODH makes the DNR Order form, DNR Protocol, and applicable rules available on its agency website for public use. Furthermore, ODH receives and acts upon complaints regarding its regulated entities. The DNR has been in use in Ohio since 1998 and is readily accepted and utilized by healthcare providers and individuals within the state without significant issues.

## **Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

All healthcare providers, to include, but not limited to, healthcare facilities, physicians, nurses, and emergency services personnel.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

The time necessary to complete the form.

The costs associated with these rules remain unchanged from previous versions of the rules. The DNR Order is available for printing from the ODH website. The cost to authorized practitioners is dependent upon the practitioner completing the form; however, 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.

The following are the average wages per service provider type:

Physicians, All Other: \$130.31 per hour\*

Nurse Practitioners: \$59.07 per hour\*

Physician Assistants: \$57.67 per hour\*

Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May 2023, using the codes physicians and all others (29-1229), nurse practitioners (29-1171), and physician assistant (29-1071).

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify.**

Not applicable.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

ODH is required to implement section 2133.25 the Ohio Revised Code to provide and maintain a standardized method of procedure for the withholding of CPR by health care practitioners and facilities. The DNR Order is an individual based written document with an insignificant adverse impact for the business community. Businesses, such as ambulatory surgical facilities, routinely include in their informed consent documents, a waiver of a DNR Order by individuals

while they are receiving services at the facility thereby eliminating any subsequent issues with upholding the order.

### **Regulatory Flexibility**

**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

A DNR Order is an individual based written document and there is no identified impact on small businesses.

**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The agency maintains program staff to assist and provide guidance to individuals and providers regarding the DNR Order form and Protocol. Chapter 2133. of the Ohio Revised Code and Chapter 3701-62 of the Ohio Administrative Code does not provide for the waiver of fines or penalties, thus, section 119.14 of the Revised Code does not apply. Certain Violations of Chapter 3701-62 of the Ohio Administrative Code are punishable as criminal offenses.

**20. What resources are available to assist small businesses with compliance of the regulation?**

A DNR Order is an individual based written document and there is no identified impact on small businesses.