

NEW "DNR" RULES WENT INTO EFFECT MAY 20, 1999

Many who are interested in medicine, palliative care and hospice and bioethics have been carefully following the progress of the legislation on "portable DNR" rules for the state of Ohio. After substantial deliberation among more than twenty constituencies, including representation from BENO, the following rules were developed, enacted and went into effect on May 20, 1999.

Because space does not allow printing of all 14 sections, the following, which are expected to be of the most interest to our readers, include those sections relating to legal immunity, DNR identification, DNR Comfort Care Protocol, revocation of a DNR order, compliance with the protocol by emergency medical services personnel, transfer between facilities and relationship between DNR orders and advance directives. Those sections which are not included in full will be indicated by an asterisk. If you wish to have a complete set of the rules, they can be accessed through the Ohio Department of Health.

*3701-62-01 - This section defines the terms used. Most terms are straight-forward.

Definitions of cardiac arrest and pulmonary arrest can be found under the protocol (3701-62-05).

*3701-62-02 - Authority of certified nurse practitioners and clinical nurse specialists.

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) A physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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) A physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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;

(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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, in the withholding or withdrawal of CPR from

the person possessing the DNR identification; and

(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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, in the withholding or withdrawal of CPR from the person for whom the do-not-resuscitate order has been issued.

(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, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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;

(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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code; 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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code.

(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 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 a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, for issuing a do-not-resuscitate order that is contrary to reasonable medical standards or that the physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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 attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, CPR would be futile, or if the person or another person lawfully authorized to make decisions on behalf of the person declines CPR.

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 form depicted in appendix A of this rule. This form may be reproduced as needed;

(2) Documentation on the form depicted in appendix A of this rule that the person named on the form 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 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 as depicted in appendix B of this rule;

(4) A necklace bearing both the logo depicted in appendix C of this rule and the person's name that is manufactured in accordance with specifications issued by the director of health. The director shall provide in the specifications that the necklaces shall be of uniform size and design. If the person is a "DNR Comfort Care - Arrest" patient as specified in rule 3701-62-05 of the Administrative Code, the necklace shall include the word "arrest" under the logo;

(5) A bracelet bearing both the logo depicted in appendix C of this rule and the person's name that is manufactured in accordance with specifications issued by the director of health. When issuing specifications for bracelets under this paragraph, the director shall ensure that the bracelets are of uniform size and design. If the person is a "DNR Comfort Care - Arrest" patient as specified in rule 3701-62-05 of the Administrative Code, the bracelet shall include the word "arrest" under the logo;

(6) A wallet card as depicted in appendix D of this rule. This card may be reproduced as needed; and

(7) A printed form of a 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 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 attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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 may be used as DNR identification if it is documented on the form depicted in appendix A of this rule.

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

(1) In the case of the form specified in paragraphs (A)(1) and (A)(2) of this rule, by obtaining a copy of the form from a physician, CNP, CNS, or health care facility and completing the form in conjunction with the person's attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code.

(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 form specified in paragraph (A)(1) of this rule and the wallet card from a physician, CNP, CNS, or health care facility; and

(b) Completing both the form and card in conjunction with the person's attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code.

(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 attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code; and

(b) Acquiring a bracelet containing a completed insert from a physician, CNP, CNS, health care facility, or pharmacy. The physician, CNP, CNS, facility, or pharmacy shall not issue a bracelet to the person unless the person presents a DNR order.

(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 attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code; and

(b) Acquiring a necklace or bracelet from a person or government entity that manufactures or distributes it. The order for the necklace or bracelet shall be accompanied by a copy of the DNR order.

(5) In the case of a 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 include a statement in the declaration that in the event of a cardiac arrest or a respiratory arrest, the declarant is not to receive CPR.

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

(A) The appendix of this rule shall 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. For a "DNR Comfort Care" patient, the DNR protocol is activated when a DNR order is issued or when a declaration that includes a directive that the declarant not receive CPR becomes effective under section 2133.03 of the Revised Code. For a "DNR Comfort Care - Arrest" patient, the DNR protocol is activated when the patient experiences cardiac or respiratory arrest.

(C) A "DNR Comfort Care - Arrest" patient is identified by the appropriate indication on the patient's DNR identification, as specified in rule 3701-62-04 of the Administrative Code, or if the patient does not have DNR identification, by a statement in the DNR order that the event of a cardiac arrest or a respiratory arrest, the patient is not to receive CPR.

The State of Ohio Do-Not-Resuscitate Protocol

Approved by the Ohio Department of Health

Identification

Patients can be either DNR Comfort Care patients or DNR Comfort Care - Arrest patients. The difference is that for a DNR Comfort Care patient, the State of Ohio DNR Protocol is activated immediately when a DNR order is issued or when a living will requesting no CPR becomes effective, but for a DNR Comfort Care -- Arrest patient, the protocol is activated only when the patient experiences a cardiac arrest or a respiratory arrest. Be careful to check the patient's DNR order or DNR identification to determine which applies.

A DNR Comfort Care or DNR Comfort Care - Arrest patient's status is confirmed when the patient has one of the following:

- *1. A DNR Comfort Care card or form completed for the patient.
- *2. A completed State of Ohio living will (declaration) form that states that the patient does not want CPR (in the case of a patient who has been determined by two doctors to be in a terminal or permanently unconscious state).
3. A DNR Comfort Care necklace or bracelet bearing the DNR Comfort Care official logo.
- *4 A DNR order signed by the patient's attending physician or, when authorized by section 2133.211 of the Ohio Revised Code, a certified nurse practitioner (CNP) or clinical nurse specialist (CNS).
5. A verbal DNR order is issued by the patient's attending physician, CNP or CNS.

* Copies of these items are sufficient.

EMS workers are not required to search a person to see if they have DNR Identification.

If an EMS or other health care worker discovers one of these items in the possession of a patient, the worker must make a reasonable effort to identify DNR patients in appropriate circumstances. Examples of ways to verify identity are:

The patient or a family member, caregiver, or friend gives the patient's name.

The health care worker knows the patient personally.

Institution identification band.

Driver's license, passport, or other picture ID.

If you cannot verify the identity of a patient with DNR Identification after reasonable efforts, you still should follow this protocol.

Verification of identity is not required for patients or residents of health care facilities when a DNR order is present on the person's chart.

EMS personnel who receive a verbal DNR order from a doctor or CNPICNS must verify the identity of the person issuing the order. Some examples of verification are:

Personal knowledge of the doctor/CNP/CNS.

List of practitioners with other identifying information such as addresses.

A return telephone call to verify information provided.

Activation

When this protocol is activated for a given DNR Comfort Care patient depends on whether the patient is a DNR Comfort Care patient or a DNR Comfort Care - Arrest patient. For a DNR Comfort Care patient, this protocol is activated when the DNR order is issued or the living will specifying no CPR becomes effective. For a DNR Comfort Care - Arrest patient, the protocol is activated when the patient experiences a cardiac arrest or a respiratory arrest.

"Cardiac arrest" means absence of a palpable pulse. "Respiratory arrest" means absence of spontaneous respirations or presence of agonal breathing.

Actions

For patients for whom the DNR Comfort Care protocol is activated, you:

Will:

- * Suction the airway
- * Administer oxygen
- * Position for comfort
- * Splint or immobilize
- * Control bleeding
- * Provide pain medication
- * Provide emotional support
- * Contact other appropriate health care providers such as hospice, home health, attending physician/CNP/CNS

Will Not:

- * Administer chest compressions
- * Insert artificial airway
- * Administer resuscitative drugs
- * Defibrillate or cardiovert
- * Provide respiratory assistance (other than that listed above)
- * Initiate resuscitative IV
- * Initiate cardiac monitoring

If you have responded to an emergency situation by initiating any of the "will not" actions prior to confirming that the DNR Comfort Care Protocol must be activated, discontinue them when you activate the protocol. You may continue respiratory assistance, IV medications, etc., that have been part of the patient's ongoing course of treatment for an underlying disease.

Interaction with the Patient, Family, and Bystanders

The patient always may request resuscitation even if he or she is a DNR Comfort Care patient and this protocol has been activated. The request for resuscitation amounts to a revocation of DNR Comfort Care status.

If family or bystanders request or demand resuscitation for a person for whom the DNR Comfort Care Protocol has been activated, do not proceed with resuscitation. Provide comfort measures as outlined above and try to help the family understand the dying process and the patient's choice not to be resuscitated.

Documentation

EMS or other health care personnel who implement the DNR Protocol for a DNR Comfort Care patient should document in their records, in accordance with the policy of their agency or facility:

- * The item that identified the person as DNR Comfort Care (as listed in the Identification portion of this protocol).
- * The method of verifying the person's identity, if any was found through reasonable efforts.
- * Whether the person was a DNR Comfort Care or DNR Comfort Care - Arrest patient.
- * The actions taken to implement the DNR Protocol.

When a DNR Order is Current

A DNR order for a patient of a health care facility shall be considered current in accordance with the facility's policy. A DNR order for a patient outside a health care facility shall be considered current unless discontinued by the patient's attending physician/CNP/CNS, or revoked by the patient. EMS personnel are not required to research whether a DNR order that appears to be current has been discontinued.

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 DNR status by an oral or written request to receive CPR.

(B) A person with DNR identification may revoke his or her DNR identification by doing any of the following:

(1) In the case of a form or wallet card listed in paragraph (A)(1), (A)(2), or (A)(6) of rule 3701-62-04 of the Administrative Code, by destroying the form or wallet card;

(2) In the case of a bracelet or necklace, by permanently removing the bracelet or necklace; or

(3) In the case of a declaration 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 attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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 be accomplished under paragraph (B) of this rule.

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

(A) If emergency medical services personnel, other than physicians, or CNPs or CNS as provided in rule 3701-62-02 of the Administrative Code, are presented with DNR identification possessed by a person or are presented with a written do-not-resuscitate order for a person or if a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, directly issues to emergency medical services personnel, other than physicians, or CNPs or CNSs as provided in rule 3701-62-02 of the Administrative Code, an oral do-not-resuscitate order for a person, the emergency medical services personnel shall comply with the do-not-resuscitate protocol for the person.

(B) If an oral do-not-resuscitate order is issued by a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, who is not present at the scene, the emergency medical services personnel shall verify the physician's, or CNP's or CNS's identity. Methods of verification include but are not limited to the following:

(1) Personal knowledge of the physician, CNP, or CNS by emergency medical services personnel;

(2) A list of physicians, CNPs, and CNSs with other identifying information such as addresses; or

(3) A return telephone call to verify information provided.

3701-62-08 Attending physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, 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, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, or the health care facility shall not prevent or attempt to prevent, or unreasonably delay or attempt to delay, the transfer of the person to a different physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, who will follow the protocol or to a different health care facility in which the

protocol will be followed.

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 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 shall notify the receiving health care facility and the persons transporting the person of the existence of the DNR identification or the order.

(B) If a current do-not-resuscitate order was issued orally, it shall be reduced to writing before the time of the transfer. The DNR identification or the order shall accompany the person to the receiving health care facility and shall remain in effect unless it is revoked or unless, in the case of a do-not-resuscitate order, the order no longer is current.

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

(A) If a principal has both a valid durable power of attorney for health care and a DNR identification that is based upon a valid declaration and if the declaration supersedes the durable power of attorney for health care under division (b) of section 2133.03 of the Revised Code, the DNR identification supersedes the durable power of attorney for health care to the extent of any conflict between the two.

(B) A valid durable power of attorney for health care supersedes any DNR identification that is based upon a do-not-resuscitate order that a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, issued for the principal which is inconsistent with the durable power of attorney for health care or a valid decision by the attorney in fact under a durable power of attorney.

(C) A declaration supersedes a DNR identification of the declarant that is based upon a prior, inconsistent declaration of the declarant or that is based upon a do-not-resuscitate order that a physician, or CNP or CNS as provided in rule 3701-62-02 of the Administrative Code, has issued for the declarant and that is inconsistent with the declaration.

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.

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

*3701-62-13 Individual rights not abrogated.

*3701-62-14 Prohibitions.