



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 165**

131st General Assembly  
(As Introduced)

**Sens.** Lehner, Seitz, Jones

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## **BILL SUMMARY**

### **Medical orders for life-sustaining treatment**

- Authorizes a physician, physician assistant, certified nurse practitioner, or clinical nurse specialist, with the consent of the patient or the patient's proxy, to issue medical orders for life-sustaining treatment for a patient of any age.
- Defines "medical orders for life-sustaining treatment" as instructions regarding how a patient should be treated with respect to hospitalization, administration or withdrawal of life-sustaining treatment and comfort care, administration of cardiopulmonary resuscitation, and other treatment prescribed by state statute.
- Requires orders in a MOLST form to be based on the patient's medical condition, preferences, and advance directives (if any) at the time the orders are issued.
- Specifies a model form for medical orders for life sustaining treatment (MOLST form) that an issuing practitioner may use to document medical orders for life-sustaining treatment for a patient.
- Requires a completed MOLST form to be placed in the medical record of the patient to whom it pertains and a copy of the form to be sent to any facility that receives the patient.
- Requires an emergency services department or unit to retain a copy of a patient's MOLST form after its emergency services personnel treat or transfer the patient.
- Specifies how a MOLST form may be revoked.

- Generally authorizes an attending physician, other health care professional, emergency services person, or health care facility to assume that a completed MOLST form complies with the bill's provisions and is valid.
- Specifies that in an emergency situation, emergency services personnel are not required to search a person to determine if the person is the subject of a MOLST form and grants immunity to the personnel despite not knowing the person is the subject of a form.
- Grants immunity to a health care facility, health care professional, or emergency services person who acts in good faith and in accordance with, or otherwise is in compliance with, a valid MOLST form and the bill's provisions governing medical orders for life-sustaining treatment.
- Specifies that the death of an individual that occurs as a result of actions taken consistent with instructions in a MOLST form does not constitute for any purpose a suicide, aggravated murder, or any other homicide.
- Prohibits completion of a MOLST form from being used to discriminate against a person for purposes of health care treatment or life or health care insurance.
- Permits a patient's attending physician or the health care facility in which the patient is located to refuse to comply or allow compliance with instructions in a MOLST form on the basis of conscience or on another basis.
- Permits an employee of an attending physician or of a health care facility in which a patient is located to refuse to comply with instructions in a MOLST form on the basis of a matter of conscience.
- Requires the Director of Health to appoint a MOLST task force for the purpose of performing a five-year review of medical orders for life-sustaining treatment and the MOLST form.

### **Do-not-resuscitate orders**

- Provides for the gradual elimination of do-not-resuscitate (DNR) orders by specifying that (1) the existing DNR protocol adopted by the Ohio Department of Health is effective only for DNR orders issued before six months after the bill's effective date and (2) the criteria for determining when a DNR order is current apply only to orders issued before that date.
- Associated with the changes described above, modifies the definition of "DNR order" to specify that it is a written directive issued before or not later than six

months after the bill's effective date that identifies a person and specifies that CPR should not be administered to that person.

- Makes conforming and technical changes to other provisions of the DNR law associated with the gradual elimination of DNR orders and the implementation of medical orders for life-sustaining treatment.

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## **CONTENT AND OPERATION**

### **OVERVIEW**

The bill pertains to two topics: medical orders for life-sustaining treatment and do-not-resuscitate (DNR) orders. Regarding the first topic, the bill establishes procedures for the use of medical orders for life-sustaining treatment, specifies in statute a model form for medical orders for life-sustaining treatment (MOLST form), and grants qualified immunity from civil liability, as well as immunity from criminal prosecution and professional disciplinary action, to persons who act in accordance with a MOLST form. Regarding the second topic, the bill provides for the gradual elimination of DNR orders by specifying that only DNR orders issued within six months after the bill's effective date must be given effect.

The bill's provisions regarding medical orders for life-sustaining treatment and DNR orders include references to, and are related in certain ways to, existing laws that govern the establishment of advance directives. Advance directives, which are commonly known as living wills and durable powers of attorney, are described below (see "Advance directives – background").

### **MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT (MOLST)**

#### **Procedures for use**

The bill establishes procedures for the use of medical orders for life-sustaining treatment in Ohio. The bill defines "medical orders for life-sustaining treatment" as instructions, issued by a physician, physician assistant, certified nurse practitioner, or clinical nurse specialist, regarding how a patient should be treated with respect to hospitalization, administration or withdrawal of life-sustaining treatment and comfort care, administration of cardiopulmonary resuscitation (CPR), and other treatment prescribed by statute.<sup>1</sup> Medical orders for life-sustaining treatment may be issued at any time, although the bill specifies that patients for whom such orders are suggested, but

<sup>1</sup> R.C. 2133.30(P).



not required, include those who are frail or experiencing an advanced or progressive illness.<sup>2</sup>

Current law not modified by the bill defines "life-sustaining treatment" as any medical procedure, treatment, intervention, or other measure that, when administered to a patient, will serve principally to prolong the process of dying.<sup>3</sup> The bill defines "comfort care" as any of the following: (1) nutrition when administered to diminish pain or discomfort, but not to postpone death, (2) hydration when administered to diminish pain or discomfort, but not to postpone death, or (3) any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish pain or discomfort, but not to postpone death.<sup>4</sup>

### **Model form**

The bill specifies a model MOLST form that health care professionals may use to document medical orders for life-sustaining treatment for a patient (see below). The bill recommends that the patient's identifying information (name, date of birth, last four digits of social security number, and gender), shown below with the form's title, appear at the top of the first page of the form. The bill also recommends that the form's remaining pages include the form's title as well as the patient's name and date of birth.<sup>5</sup> The Ohio Department of Health (ODH) must make a version of the MOLST form available on its web site that may be downloaded free of charge and reproduced.<sup>6</sup>

### **MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT FORM ("MOLST FORM")**

Patient's Name (last name, first name, and middle initial, printed):  
.....

Patient's Date of Birth: .....

Last four digits of patient's SSN: ..... Gender (M or F): .....

The HIPAA Privacy Rule permits disclosure of this MOLST form to other health care providers as necessary.

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<sup>2</sup> R.C. 2133.33.

<sup>3</sup> R.C. 2133.01(Q).

<sup>4</sup> R.C. 2133.30(E).

<sup>5</sup> R.C. 2133.31.

<sup>6</sup> R.C. 2133.32.



When signed, this form supersedes all previously signed MOLST forms. Comfort measures will be provided regardless of the intervention that is chosen.

**A. CARDIOPULMONARY RESUSCITATION (CPR): Individual has no pulse and is not breathing. Check only one:**

**Attempt resuscitation/CPR.** Apply full treatment and intervention including intubation, advanced airway interventions, mechanical ventilation, defibrillation, and cardioversion as indicated. *Transfer to hospital or intensive care unit in a hospital, as applicable (if indicated).*

**Do NOT attempt resuscitation (DNR; do not use CPR).**

When patient is not in cardiopulmonary arrest, follow the orders in sections B and C.

**B. MEDICAL INTERVENTIONS: Patient has a pulse, is breathing, or both. Check only one:**

**Comfort measures only.** Use medication by any route, positioning, wound care, and other measures to relieve pain and suffering. Use oxygen, suction, and manual treatment of airway obstruction as needed for comfort. *Transfer to the appropriate level of care setting to provide comfort care measures.*

*Additional order/instructions:* .....

.....

**Limited additional interventions.** Use all comfort measures described above. Use medical treatment, antibiotics, intravenous fluids, and cardiac monitor as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. Do not use intubation, advanced airway support (e.g., CPAP or BiPAP). *Transfer to hospital if indicated; generally avoid intensive care.*

*Additional order/instructions:* .....

.....

**Full intervention.** Use all comfort measures described above as well as limited medical interventions (described above), as indicated. Use intubation, advanced airway interventions, mechanical ventilation, defibrillation, and cardioversion as indicated. *Transfer to hospital and intensive care if indicated.*



Additional order/instructions: .....

.....

### C. ARTIFICIALLY ADMINISTERED NUTRITION/HYDRATION

The administration of nutrition or hydration, or both, whether orally or by invasive means, shall occur except in the event that the patient is diagnosed with a terminal condition or is in a permanently unconscious state, as those terms are defined in Ohio Revised Code section 2133.01, and the administration of nutrition or hydration becomes a greater burden than benefit to the patient.

**Always offer by mouth, if feasible. Check only one in each column:**

- Long-term artificial nutrition by tube feeding
- Defined trial period of artificial nutrition by tube feeding
- No artificial nutrition by tube feeding

Goals of care or additional order/instructions: .....

.....

### D. AUTHORIZATION

Authorization name and signature belongs to (**check only one**):

- Patient
- Guardian appointed by a probate court
- Attorney in fact under patient's durable power of attorney for health care (attach if signed)
- Next of kin as specified in Ohio Revised Code section 2133.08(B)
  - Spouse
  - Majority of adult children (available within reasonable time)
  - Parents
  - Majority of adult siblings (available within reasonable time)
  - Other nearest relative (available within reasonable time)



[ ] Parent, guardian, or legal custodian of a minor

**Name (printed):** .....

**Phone Contact:** .....

**Signature (mandatory):** .....

**Date Signed:** .....

**E. SIGNATURE OF ISSUING PRACTITIONER**

My signature in this section indicates, to the best of my knowledge, that these orders are consistent with the patient's current medical condition and preferences as indicated by the patient's advance directives, previous discussions with the person identified in Section D., above, or both.

**Name of issuing practitioner (printed):**

.....

**Signature of Issuing Practitioner (mandatory):**

.....

**Date Signed:** .....

**License/Certificate Number:** .....

**Phone Number:** .....

**F. SIGNATURE OF FORM PREPARER**

**Name of Form Preparer and Credentials (printed):**

.....

**Signature of Form Preparer (mandatory):**

.....

**Date signed:** ..... **Phone Number:** .....





## G. REVIEW OF MOLST FORM

A MOLST form may be revoked at any time and in any manner that communicates the intent to revoke. A MOLST form does not expire unless revoked.

### Review of This MOLST Form

Review date and time	Reviewer's name	Location of review	Review Outcome
(1)			<input type="checkbox"/> No change <input type="checkbox"/> Revoked and new form completed
(2)			<input type="checkbox"/> No change <input type="checkbox"/> Revoked and new form completed
(3)			<input type="checkbox"/> No change <input type="checkbox"/> Revoked and new form completed

### SEND FORM WITH PATIENT WHENEVER PATIENT IS TRANSFERRED OR DISCHARGED

Use of original form is strongly encouraged. Photocopies and faxes of signed MOLST forms are legal and valid.

The following information shall appear on one or more pages that are separate from the other pages of the MOLST form:

### OHIO MOLST FORM INFORMATIONAL SUPPLEMENT

#### NOTICE TO PATIENT NAMED ON THIS FORM

The MOLST form is a medical order form that documents important decisions regarding your health care. Your input and approval or the input and approval of your legal representative (i.e., an agent, guardian, next of kin, or legal custodian) concerning the form's use is needed before it becomes valid. The following is an information supplement to the MOLST form. Before signing the form after consulting with your health care practitioner, you should know the facts in the supplement.

#### Overview

The MOLST form is **always voluntary**. It is usually for individuals who are frail or experiencing advanced or progressing illness. There is no requirement that you or



your legal representative sign a MOLST form. You will still receive medical treatment regardless of whether this form is signed.

The orders in the MOLST form are based on your medical condition, preferences, and advance directives (if any) at the time the orders are issued. An incomplete section of the form does not invalidate the form and implies full treatment for the incomplete section. The form indicates your wishes for medical treatment in your current state of health. Once initial medical treatment has begun and the risks and benefits of further therapy are clear, your treatment wishes may change. Your medical care and the form can be modified at any time to reflect such changes. However, the form cannot address all medical treatment decisions that may need to be made. An advance directive, such as a living will (declaration) or durable power of attorney for health care, is recommended for all competent adults regardless of their health status. An advance directive allows you to document in detail your instructions for future health care and specify a health care "attorney-in-fact" or agent to speak on your behalf if necessary.

The duty of medicine is to care for you even when you cannot be cured. You will be treated with dignity and respect and attention will be given to your medical needs. Moral judgments about the use of technology to maintain life will reflect the inherent dignity of human life, the duty of medical care, medical standards of practice, and your individual wishes. Use of the MOLST form recognizes the possibility of natural death. It does not authorize active euthanasia or physician-assisted suicide.

### **Implementation of the MOLST form**

When signed, this form supersedes all previously signed MOLST forms. If a health care practitioner or facility cannot comply with the orders in the form due to policies or personal ethics, the practitioner or facility must arrange for your transfer to another practitioner or facility and provide the care that you request until the transfer has been completed.

### **Review of MOLST form**

This form should be reviewed periodically, such as when you are transferred from one care setting or care level to another or there is a substantial change in your health status. A new MOLST form should be completed if you wish to make a substantive change to your treatment goals (e.g., reversal of a prior order). A MOLST form that you or your representative signed will be retained in your medical record pursuant to Ohio Revised Code section 2133.36.

## **Revocation of the MOLST form**

This form may be revoked at any time and in any manner that communicates the intent to revoke. If you are under 18 years of age, your parent, guardian, or legal custodian may revoke a MOLST form at any time and in any manner that communicates the intent to revoke. A MOLST form that was revoked will be retained in your medical record pursuant to Ohio Revised Code section 2133.38.

## **Portability of the MOLST form**

This form must be sent with you when you are transferred between facilities or are discharged. Use of the original form is strongly encouraged, although photocopies and facsimiles are legal and valid. The HIPAA Privacy Rule permits disclosure of the form to health care professionals for treatment purposes.

## **Who participates in completing and signing a MOLST form**

### **Issuing practitioner and patient**

In general, the bill requires the issuing practitioner and the patient who is the subject of a MOLST form to sign the form in the appropriate spaces. The issuing practitioner may delegate the duty to complete the form to another person. If the practitioner does so, the practitioner still must sign the form (in addition to the person who completes the form).<sup>7</sup>

The issuing practitioner is the physician, physician assistant, certified nurse practitioner, or clinical nurse specialist who, acting within the individual's scope of practice, issues medical orders for life-sustaining treatment for the patient.<sup>8</sup> The person who completes the form is the "form preparer."<sup>9</sup>

### **Proxy**

A patient is not required to sign a MOLST form in four situations: (1) a guardian has been appointed for the patient, (2) an attorney-in-fact under a durable power of attorney for health care is making health care decisions for the patient, (3) the patient is a minor, or (4) the patient is incapacitated and does not have a guardian or attorney-in-fact under a durable power of attorney for healthcare. In these situations, another

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<sup>7</sup> R.C. 2133.34(A) and (D).

<sup>8</sup> R.C. 2133.30(N).

<sup>9</sup> R.C. 2133.30(K).

individual or class of individuals (the "proxy") may sign on the patient's behalf in the appropriate space.<sup>10</sup>

**(1) Patient has a guardian**

If a guardian has been appointed for the patient, the guardian may sign and date the form on the patient's behalf.<sup>11</sup>

**(2) Patient has a durable power of attorney for health care**

If an attorney-in-fact under a durable power of attorney for health care is making health care decisions for the patient, the attorney-in-fact may sign and date the form on the patient's behalf.<sup>12</sup>

**(3) Minor patient**

If a patient is under 18 years of age, the patient's parent, guardian, or legal custodian may sign and date the form.<sup>13</sup>

**(4) Incapacitated adult patient**

If the patient is at least 18 years of age, incapacitated, and neither has a guardian nor an attorney-in-fact under a durable power of attorney for health care, the proxy is the person who would be the patient's proxy under law governing who may consent to the withholding or withdrawal of life-sustaining treatment under a living will.<sup>14</sup> (Ohio law refers to a living will as a "declaration."<sup>15</sup>) Those persons are:<sup>16</sup>

(1) The patient's spouse.

(2) An adult child of the patient or, if there is more than one, a majority of the adult children who are reasonably available for consultation.

(3) The patient's parents.

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<sup>10</sup> R.C. 2133.34(B).

<sup>11</sup> R.C. 2133.34(C)(1).

<sup>12</sup> R.C. 2133.34(C)(2).

<sup>13</sup> R.C. 2133.34(C)(3).

<sup>14</sup> R.C. 2133.34(C)(4).

<sup>15</sup> R.C. 2133.01(F), not in the bill.

<sup>16</sup> R.C. 2133.08(B)(2) to (6), not in the bill.

(4) An adult sibling of the patient or, if there is more than one, a majority of the adult siblings who are reasonably available for consultation.

(5) The nearest adult not described in (1) to (4), above, who is related to the patient by blood or adoption, and who is reasonably available for consultation.

### **Restrictions on orders included in a MOLST form**

The MOLST form informational supplement specifies that the orders included in the form are based on the patient's medical condition, preferences, and advance directives (if any) at the time the orders are issued.<sup>17</sup> If a parent, guardian, or legal custodian signs a MOLST form for a minor, the bill prohibits that individual from indicating instructions that would result in the withholding of medically indicated treatment as defined in the federal Child Abuse Prevention, Adoption, and Family Services Act of 1988.<sup>18</sup> Under that law, the "withholding of medically indicated treatment" is the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. The term excludes the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment: (1) the infant is chronically and irreversibly comatose, (2) the provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant, or (3) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.<sup>19</sup>

### **Validity**

Once completed and signed in accordance with the bill,<sup>20</sup> a MOLST form is valid and the instructions in it become operative and govern how the patient who is the subject of the form is to be treated with respect to hospitalization, administration or withdrawal of life-sustaining treatment and comfort care, administration of CPR, and any other medical treatment specified on the form. The bill specifies that, at all times,

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<sup>17</sup> R.C. 2133.31.

<sup>18</sup> R.C. 2133.35(A).

<sup>19</sup> 42 United States Code (U.S.C.) 5106g.

<sup>20</sup> Specifically, R.C. 2133.34 and 2133.35.

the issuance of medical orders for life-sustaining treatment must be guided by prudent medical practice and standards.<sup>21</sup>

Unless revoked in the manner specified by the bill (see "**Revocation**," below), a MOLST form does not expire.<sup>22</sup>

### **Inclusion in medical record**

The bill requires a completed MOLST form to be placed in the paper or electronic medical record of the patient to whom it pertains. The form must be readily available and retrievable.<sup>23</sup>

### **Transferability**

If a patient with a MOLST form is transferred from one health care facility to another, the facility initiating the transfer must communicate the existence of, and send a copy of, the form to the receiving facility before the transfer. The copy may be sent by regular mail, facsimile, or other electronic means. The bill specifies that a copy of the form is the same as the original.<sup>24</sup>

The bill defines "health care facility" as (1) a hospital, (2) a hospice care program, pediatric respite care program, or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state, (3) a nursing home, (4) a home health agency, (5) an intermediate care facility for individuals with intellectual disabilities, (6) a regulated community mental health organization, (7) an ambulatory surgical facility, (8) a residential care facility, or (9) a freestanding dialysis center.<sup>25</sup>

A copy of the MOLST form must be placed in the patient's medical record immediately on receipt by the receiving facility. After admission, the attending physician must review the form.<sup>26</sup>

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<sup>21</sup> R.C. 2133.33.

<sup>22</sup> R.C. 2133.39.

<sup>23</sup> R.C. 2133.36.

<sup>24</sup> R.C. 2133.37(A).

<sup>25</sup> R.C. 2133.30(M).

<sup>26</sup> R.C. 2133.37(B).

## Revocation

The bill authorizes a patient or the patient's proxy to revoke a MOLST form at any time and in any manner that communicates the intent to revoke. A revoked form must be maintained in the patient's medical record.<sup>27</sup>

## Special considerations for emergency services personnel

In an emergency situation, the bill specifies that emergency services personnel are not required to search a person to determine if the person is the subject of a MOLST form. If a person is the subject of a MOLST form, if emergency services personnel or emergency department personnel provide care to the person in an emergency situation, and if, at that time, the personnel do not know or have reasonable cause to believe that the person is the subject of a MOLST form, the bill specifies that the emergency services personnel are not subject to criminal prosecution and are immune from civil liability and professional disciplinary action associated with providing care that is in accordance with applicable law.<sup>28</sup>

If a person who possesses a MOLST form or for whom a MOLST form has been issued is treated or transferred by emergency services personnel, the emergency services department or unit with which the emergency services personnel is affiliated must retain a copy of the form.<sup>29</sup> To be consistent with changes made in 2011 to the law governing the provision of emergency medical services,<sup>30</sup> the bill defines "emergency services personnel" as paid or volunteer firefighters, law enforcement officers, medical technicians, emergency medical responders, emergency medical technicians, advanced emergency medical technicians, or paramedics.<sup>31</sup> Existing provisions in law governing DNR orders refers to these persons as "emergency medical services personnel."<sup>32</sup>

## Immunity

In general, the bill provides that a health care facility, health care professional, emergency services person, or other individual who provides care in an emergency situation to a person under the direction of or with the authorization of a health

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<sup>27</sup> R.C. 2133.38.

<sup>28</sup> R.C. 2133.40.

<sup>29</sup> R.C. 2133.37(C).

<sup>30</sup> See R.C. 4765.011 (enacted by Sub. H.B. 128 of the 129th General Assembly).

<sup>31</sup> R.C. 2133.21(G) and 2133.30(J).

<sup>32</sup> R.C. 2133.21(F).



professional who may issue medical orders for life-sustaining treatment while at the person's residence, in public, or at a health care facility is not subject to criminal prosecution, liable in damages in tort or other civil action, or subject to professional disciplinary action for acting in good faith and in accordance with, or otherwise being in compliance with, a valid MOLST form or the bill's provisions governing medical orders for life-sustaining treatment.<sup>33</sup> "Good faith" is a standard that applies only in the context of immunity from civil liability;<sup>34</sup> thus, it appears that a person would not be subject to criminal prosecution or professional disciplinary action as long as the person acted in accordance with a patient's MOLST form and the bill's medical order for life-sustaining treatment provisions.

The bill specifies that the immunity provided by the bill is subject to conditions, but those are not specified.<sup>35</sup>

### **Death resulting from actions consistent with MOLST form**

The bill specifies that the death of an individual that occurs as a result of actions taken consistent with instructions in a MOLST form does not constitute for any purpose a suicide, aggravated murder, or any other homicide.<sup>36</sup>

### **Life insurance**

The bill provides that the issuance or nonissuance of a MOLST form does not do any of the following:<sup>37</sup>

--Affect in any manner the sale, procurement, issuance, or renewal of a life insurance policy or an annuity, notwithstanding a term of the policy or annuity to the contrary;

--Modify in any manner or invalidate the terms of a life insurance policy or annuity that is in effect on the bill's effective date;

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<sup>33</sup> R.C. 2133.41(A).

<sup>34</sup> See Raymond K. Shin, JD, MPP, *Protection Against Liability for Emergency Medical Services Providers*, 8 J. EMERG. MGT. 17 (May/June 2010), available at <[http://www.mdchhs.com/sites/default/files/pdf\\_articles/IEM-8-3-02-protection\\_against\\_liability.pdf](http://www.mdchhs.com/sites/default/files/pdf_articles/IEM-8-3-02-protection_against_liability.pdf)>.

<sup>35</sup> R.C. 2133.41.

<sup>36</sup> R.C. 2133.42.

<sup>37</sup> R.C. 2133.43.



--Impair or invalidate a life insurance policy or annuity or any health benefit plan.

### **Denial of coverage or care**

The bill prohibits a physician, health care facility, other health care provider, sickness and accident insurer, health insuring corporation, other health benefit plan, self-insured employer, government entity, or other person from doing either of the following as a condition of being insured or of receiving health care benefits or services:<sup>38</sup>

(1) Requiring an individual to be the subject of a MOLST form;

(2) Requiring an individual to revoke or refrain from being the subject of a MOLST form.

### **Conscientious refusal**

The bill permits an attending physician of a patient or a health care facility in which a patient is located to refuse to comply or allow compliance with instructions in a MOLST form on the basis of conscience or on another basis. An employee of an attending physician or of a health care facility in which a patient is located may refuse to comply with instructions in a MOLST form on the basis of a matter of conscience.<sup>39</sup>

If an attending physician or a health facility is not willing or able to comply or allow compliance with instructions in a MOLST form, the physician or facility must immediately notify the patient or the patient's proxy of that fact. Further, the physician or facility is prohibited from preventing or attempting to prevent, or unreasonably delaying or attempting to unreasonably delay, the transfer of a patient to the care of another physician or facility willing and able to comply or allow compliance.<sup>40</sup>

The bill defines "attending physician" as the physician to whom a patient or patient's family has assigned primary responsibility for the medical treatment or care of the patient or, if the responsibility has not been assigned, the physician who has accepted that responsibility.<sup>41</sup>

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<sup>38</sup> R.C. 2133.44.

<sup>39</sup> R.C. 2133.45(A).

<sup>40</sup> R.C. 2133.46(B).

<sup>41</sup> R.C. 2133.30(C).

## Presumption of legality

Absent actual knowledge to the contrary and if acting in good faith, the bill authorizes an attending physician, other health care professional, emergency services person, or health care facility to assume that a MOLST form complies with the bill's provisions and is valid.<sup>42</sup>

## Task force

The bill requires the Director of Health to appoint a MOLST task force not later than 60 months after the bill's effective date. The task force must perform a five-year review of medical orders for life-sustaining treatment and the MOLST form. Task force members must be, or represent, persons or government entities that have experience with medical orders for life-sustaining treatment or the MOLST form. Not later than 72 months after the bill's effective date, the task force must submit a report of its findings to the General Assembly. The report is to be submitted in accordance with procedures established under existing law for submission of reports.<sup>43</sup> This means that the report must be submitted to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission.<sup>44</sup>

Members of the task force must serve without compensation. They may, however, be reimbursed for necessary expenses.<sup>45</sup>

## Assisted suicide

Current law declares assisted suicide to be against state policy.<sup>46</sup> It also specifies that nothing in that law limits the authority of a person to refuse informed consent to health care, including through a durable power of attorney for health care (DPOA-HC), living will, or DNR order.<sup>47</sup> The bill expands this provision by specifying that nothing in

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<sup>42</sup> R.C. 2133.46.

<sup>43</sup> R.C. 2133.47.

<sup>44</sup> R.C. 101.68(B).

<sup>45</sup> R.C. 2133.47.

<sup>46</sup> R.C. 3795.02(A), not in the bill.

<sup>47</sup> R.C. 3795.03(C) and (D).



the assisted suicide law affects or limits the authority of a person to give informed consent to health care through the completion of a MOLST form.<sup>48</sup>

## DO-NOT-RESUSCITATE (DNR) ORDERS

### Background

Under current law governing DNR orders,<sup>49</sup> a DNR order is a directive issued by a physician, physician assistant, certified nurse practitioner, or clinical nurse specialist that identifies a person (adult or minor) and specifies that CPR should not be administered to the identified person in emergency and special circumstances.<sup>50</sup> Rules adopted by ODH specify all of the following as components of CPR:<sup>51</sup>

- Administration of chest compressions;
- Insertion of an artificial airway;
- Administration of resuscitation drugs;
- Defibrillation or cardioversion;
- Provision of respiratory assistance;
- Initiation of a resuscitative intravenous line;
- Initiation of cardiac monitoring.

As opposed to a living will or DPOA-HC (see "**Advance directives – background**," below), a DNR order is not an advance directive signed by the patient. Instead, it is an order issued by a medical professional that the professional affirms is not contrary to reasonable medical standards or the wishes of the patient or the patient's representative.<sup>52</sup>

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<sup>48</sup> R.C. 3795.03.

<sup>49</sup> R.C. 2133.21 to 2133.26.

<sup>50</sup> R.C. 2133.21(D) and 2133.211.

<sup>51</sup> Ohio Administrative Code (O.A.C.) 3701-62-01(E).

<sup>52</sup> O.A.C. 3701-62-04, Appendix A.



With the assistance of an advisory committee, ODH has adopted rules to administer the DNR law.<sup>53</sup> Among those are rules specifying approved forms of DNR identification, which include several different forms, jewelry, and a wallet card.<sup>54</sup>

### **DNR orders issued pursuant to the DNR protocol**

Under current law, how CPR is withheld from a person pursuant to a DNR order is determined by a standardized method or procedure for the withholding of CPR.<sup>55</sup> This standardized method, called the do-not-resuscitate protocol,<sup>56</sup> is specified by ODH in rules.<sup>57</sup> When the DNR protocol is activated, an emergency medical services person or other health care professional is required to do, or is prohibited from doing, the following:

<b>REQUIRED</b>	<b>PROHIBITED</b>
Suction the airway	Administer chest compressions
Administer oxygen	Insert artificial airway
Position for comfort	Administer resuscitative drugs
Splint or immobilize	Defibrillate or cardiovert
Control bleeding	Provide respiratory assistance other than assistance included in the required actions
Provide pain medication	Initiate resuscitative IV
Provide emotional support	Initiate cardiac monitoring
Contact other appropriate health care providers such as hospice, home health, attending physician, certified nurse practitioner, or clinical nurse specialist	

The point at which the DNR protocol is activated for a patient with a DNR order depends on which of two types of DNR orders has been issued. A "DNR Comfort Care-Arrest Order" directs medical professionals to activate the protocol only when the patient experiences cardiac or respiratory arrest. A "DNR Comfort Care Order," conversely, is activated when the DNR order is issued.<sup>58</sup> This means that a patient with

<sup>53</sup> See O.A.C. Chapter 3701-62.

<sup>54</sup> O.A.C. 3701-62-04.

<sup>55</sup> R.C. 2133.23.

<sup>56</sup> R.C. 2133.21(E).

<sup>57</sup> O.A.C. 3701-62-05.

<sup>58</sup> O.A.C. 3701-62-05.



a DNR Comfort Care-Arrest Order is supposed to receive all medical treatment (which may include components of CPR) until the patient suffers from cardiac or respiratory arrest, at which point only comfort care is to be provided. Alternatively, a patient with a DNR Comfort Care Order is supposed to receive, from the time the order is written, only comfort care measures should an event occur that is life threatening or ending.<sup>59</sup>

The bill specifies that the DNR protocol is effective only for DNR orders issued before the date that is not later than six months after the bill's effective date. The bill also specifies that the criteria for determining when a DNR order is current apply only to orders issued before that date.<sup>60</sup> Accordingly, the bill modifies the definition of "DNR order" to specify that it is a written directive issued prior to or not later than six months after the bill's effective date.<sup>61</sup> The result of these changes is that the bill provides for the gradual elimination of DNR orders.

## **Conforming changes**

Associated with the bill's provisions limiting when the DNR protocol remains applicable, providing for the gradual elimination of DNR orders, and implementing medical orders for life-sustaining treatment, the bill makes a number of conforming changes to other provisions of current law. The conforming changes pertain to the following topics.

### **Emergency services personnel**

The bill specifies that if an emergency services person is presented with a person's DNR identification or a DNR order for the person, the emergency services person must comply with the instructions signified by the DNR identification or in the DNR order unless the emergency services person is aware that those instructions are revoked or superseded by another advance directive or a MOLST form.<sup>62</sup> (As discussed below, DNR identification may signify that an issuing practitioner has completed a

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<sup>59</sup> Midwest Care Alliance et al., *Choices: Living Well at the End of Life* (last visited November 29, 2014), available at [http://associationdatabase.com/aws/MCA/asset\\_manager/get\\_file/32895/choices\\_april\\_2011.pdf](http://associationdatabase.com/aws/MCA/asset_manager/get_file/32895/choices_april_2011.pdf).

<sup>60</sup> R.C. 2133.26(B).

<sup>61</sup> R.C. 2133.21(E).

<sup>62</sup> R.C. 2133.24(A) and 2133.27(A)(5).

MOLST form that has not been revoked.<sup>63</sup>) Under current law, the emergency services person must comply with the DNR protocol for the person.<sup>64</sup>

### **Immunity**

Current law specifies that the following are not subject to criminal or civil liability or professional disciplinary action arising out of or relating to the withholding or withdrawal of CPR from a person (1) after DNR identification is discovered in the person's possession, (2) reasonable efforts have been made to determine that the person in possession of the identification is the person named on the identification, and (3) the withholding or withdrawal is in accordance with the DNR protocol adopted by ODH:<sup>65</sup>

--A physician who causes the withholding or withdrawal of CPR from the person possessing the identification;

--A person who participates under the direction of or with the authorization of a physician in the withholding or withdrawal of CPR from the person possessing the identification;

--Any emergency services personnel who cause or participate in the withholding or withdrawal of CPR from the person possessing the identification;

--If the person is in a health care facility, the facility or facility administrator, a physician who causes the withholding or withdrawal of CPR from the person possessing the DNR identification, or any person who works for the facility as an employee, contractor, or volunteer and participates under the direction of or with the authorization of a physician in the withholding or withdrawal of CPR from the person possessing the identification.

The bill modifies the third condition, above, by instead specifying that the immunity does not apply unless the withholding or withdrawal of CPR is in accordance with the instructions signified by the person's DNR identification (as opposed to the DNR protocol).<sup>66</sup>

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<sup>63</sup> R.C. 2133.24(D).

<sup>64</sup> R.C. 2133.23(A).

<sup>65</sup> R.C. 2133.22(A), (B), and (C).

<sup>66</sup> R.C. 2133.28(A).

## **Patient transfers**

The bill prohibits an attending physician or health care facility that is unwilling or unable to comply with instructions signified by a person's DNR identification or in the person's DNR order (instead of the DNR protocol) from preventing or attempting to prevent, or unreasonably delaying or attempting to delay, the transfer of the person to a different physician who will follow the instructions or to a different health care facility in which the instructions will be followed.<sup>67</sup>

The bill also requires a health care facility that transfers a person who has executed a living will or who is the subject of a DNR order (in addition to a person who possesses DNR identification) to notify the receiving health care facility and the individuals transporting the person of the existence of the relevant item.<sup>68</sup> If one exists, a living will or DNR order must accompany the person to the receiving health care facility and remains in effect unless it is revoked or, in the case of a DNR order, is not current.<sup>69</sup>

## **MOLST forms**

The bill specifies that DNR identification may signify that an issuing practitioner has completed a MOLST form that has not been revoked. Under current law, DNR identification is limited to signifying that an individual has a living will or DNR order that has not been revoked.<sup>70</sup>

If an emergency services person, a physician, or a health care facility is aware that a person's DNR identification signifies that the person is the subject of a MOLST form, the bill requires the emergency services person, physician, or health care facility to comply with the bill's provisions governing medical orders for life-sustaining treatment.<sup>71</sup>

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<sup>67</sup> R.C. 2133.24(B).

<sup>68</sup> R.C. 2133.24(C).

<sup>69</sup> R.C. 2133.24(C).

<sup>70</sup> R.C. 2133.21(D)(3).

<sup>71</sup> R.C. 2133.24(D).

## Written DNR orders

The bill specifies that a DNR order must be in writing.<sup>72</sup> Under current law, a DNR order may be issued orally.<sup>73</sup>

## Death is not suicide or homicide

The bill specifies that the death of a person resulting from the withholding or withdrawal of CPR pursuant to instructions in a declaration or DNR order or pursuant to instructions that form the basis of the person's DNR identification does not constitute a suicide, aggravated murder, murder, or any other homicide.<sup>74</sup> Current law refers to the death of a person resulting from the withholding or withdrawal of CPR pursuant to the DNR protocol.<sup>75</sup>

## Life insurance

The bill specifies that if a person is the subject of a living will or a DNR order or possesses DNR identification, the existence of the living will or DNR order or the possession of the DNR identification cannot do either of the following:<sup>76</sup>

- (1) Affect in any manner the sale, procurement, issuance, or renewal of a life insurance policy or annuity, notwithstanding any term of the policy or annuity to the contrary;
- (2) Be deemed to modify in any manner or invalidate the terms of any life insurance policy or annuity that is in effect on the bill's effective date.

The bill also specifies that notwithstanding any term of a life insurance policy 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 has executed a living will or for whom a DNR order has been issued cannot impair or invalidate any life insurance policy or annuity.<sup>77</sup>

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<sup>72</sup> R.C. 2133.21(E).

<sup>73</sup> R.C. 2133.23(C).

<sup>74</sup> R.C. 2133.25(A).

<sup>75</sup> R.C. 2133.24(A).

<sup>76</sup> R.C. 2133.25(B)(1).

<sup>77</sup> R.C. 2133.25(B)(2).





Current law excludes a reference to a living will or DNR order in these provisions.<sup>78</sup>

### **Health insurance**

The bill specifies that, notwithstanding any term of a policy or plan to the contrary, neither of the following can impair or invalidate any health insurance policy or other health care benefit plan:<sup>79</sup>

(1) The withholding or withdrawal of CPR, in accordance with the DNR law, from a person who is insured or covered under a policy or plan and who possesses DNR identification, who has executed a living will, or for whom a DNR order has been issued;

(2) The provision, in accordance with the DNR law, of CPR to a person described above.

Current law excludes a reference to a living will or DNR order in the first provision.<sup>80</sup>

### **Denial of coverage or care**

The bill prohibits a physician, health care facility, other health care provider, sickness and accident insurer, health insuring corporation, other health benefit plan, self-insured employer, governmental entity, or other person from requiring an individual to (1) possess DNR identification, execute a living will, or have a DNR order issued or (2) revoke or refrain from possessing DNR identification as a condition of being insured or of receiving health care benefits or services.<sup>81</sup> Under current law, the first prohibition applies only to DNR identification.<sup>82</sup>

### **Continuation of CPR**

The bill specifies that the DNR law does not do either of the following:<sup>83</sup>

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<sup>78</sup> R.C. 2133.24(B)(1) and (2).

<sup>79</sup> R.C. 2133.25(B)(3).

<sup>80</sup> R.C. 2133.24(B)(3).

<sup>81</sup> R.C. 2133.25(B)(4).

<sup>82</sup> R.C. 2133.24(B)(4).

<sup>83</sup> R.C. 2133.25(C)(1) and (2).

(1) Create any presumption concerning the intent of an individual who does not possess DNR identification with respect to the use, continuation, withholding, or withdrawal of CPR;

(2) Affect the right of a person to make informed decisions regarding the use, continuation, withholding, or withdrawal of CPR for the person as long as the person is able to make those decisions.

Current law excludes a reference to continuation of CPR in both provisions.<sup>84</sup>

### **DNR protocol advisory committee**

The bill eliminates ODH's authority to appoint an advisory committee to advise ODH in the development of rules regarding the DNR protocol.<sup>85</sup>

### **Technical changes**

The bill relocates, but does not substantively modify, current law provisions that do all of the following:

--Specify that emergency services personnel are not required to search a person to determine if the person possesses DNR identification.<sup>86</sup> (Under the provision, emergency services personnel and emergency department personnel have absolute immunity from civil liability, as well as immunity from criminal prosecution and professional disciplinary action, when they provide CPR to a person in an emergency situation if they did not know or have reasonable cause to believe that the person possessed DNR identification.<sup>87</sup>)

--Grant absolute immunity from civil liability, as well as immunity from criminal prosecution and professional disciplinary action, to any person who provides CPR pursuant to a person's oral or written request after DNR identification is discovered in the person's possession.<sup>88</sup>

--Specify that the DNR provisions do not grant immunity to a physician for issuing a DNR order that is contrary to reasonable medical standards or that the

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<sup>84</sup> R.C. 2133.24(C)(1) and (2).

<sup>85</sup> R.C. 2133.25(C).

<sup>86</sup> R.C. 2133.22(C), relocated to R.C. 2133.29(A).

<sup>87</sup> R.C. 2133.22(C), relocated to R.C. 2133.29(A).

<sup>88</sup> R.C. 2133.22(A)(3), relocated to R.C. 2133.29(B).

physician knows or has reason to know is contrary to the wishes of the patient or the patient's representative.<sup>89</sup>

--Specify that the DNR provisions do not condone, authorize, or approve of mercy killing, assisted suicide, or euthanasia.<sup>90</sup>

## **Advance directives – background**

An advance directive is a legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate. It may also be a legal document in which an individual designates a surrogate decision maker for health care matters.<sup>91</sup> Two advance directives referred to in the bill are living wills (called "declarations" under Ohio law) and durable powers of attorney for health care (DPOA-HC).

### **Living wills**

A living will is an advance directive an individual (the "declarant") can execute to govern the use or continuation of, or the withholding or withdrawal of, life-sustaining treatment when the declarant becomes (1) terminally ill and unable to express wishes regarding health care or (2) permanently unconscious. For a living will to become operative, it must be communicated to the attending physician of the declarant, the attending physician and one other physician who examines the declarant must determine that the declarant is in a terminal condition or in a permanently unconscious state, and the attending physician must determine that the declarant is no longer able to make informed decisions regarding the administration of life-sustaining treatment.<sup>92</sup>

### **Durable powers of attorney for health care (DPOA-HC)**

A DPOA-HC is an advance directive an individual (the "principal") can execute to designate another individual (the "attorney-in-fact") to make health care decisions once the principal's attending physician determines that the principal cannot make them.<sup>93</sup> Thus, a principal under a DPOA-HC does not have to be in a terminal condition

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<sup>89</sup> R.C. 2133.22(D), relocated to R.C. 2133.22.

<sup>90</sup> R.C. 2133.24(D), relocated to R.C. 2133.22.

<sup>91</sup> BLACK'S LAW DICTIONARY 60 (9<sup>th</sup> ed. 2009).

<sup>92</sup> R.C. 2133.02 and 2133.03, not in the bill.

<sup>93</sup> R.C. 1337.12(A)(1), not in the bill.

or permanently unconscious state for the document to become operative. An attorney-in-fact under a DPOA-HC is prohibited, however, from:<sup>94</sup>

--Refusing or withdrawing informed consent to life-sustaining treatment, unless the principal is in a terminal condition or in a permanently unconscious state and unless the certain conditions apply;

--Refusing or withdrawing informed consent to health care necessary to provide comfort care;

--Refusing or withdrawing informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless the principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive;

--Refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal, unless the principal is in a terminal condition or in a permanently unconscious state and unless certain conditions apply; or

--Withdrawing informed consent to any health care to which the principal previously consented, unless (1) a change in the physical condition of the principal has significantly decreased the benefit of that health care to the principal or (2) the health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use.

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## HISTORY

ACTION	DATE
Introduced	05-18-15

S0165-I-131.docx/emr

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<sup>94</sup> R.C. 1337.13(B) to (F).

