

## NONOPIOID DIRECTIVE FORM

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5152 as enacted**  
**Public Act 554 of 2018**  
**Sponsor: Rep. Sam Singh**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5153 as enacted**  
**Public Act 555 of 2018**  
**Sponsor: Rep. Edward J. Canfield, D.O.**

**House Committee: Health Policy**  
**Senate Committee: Health Policy**  
**Complete to 2-18-19**

**BRIEF SUMMARY:** House Bill 5152 amends the Public Health Code to provide for a nonopioid directive form, which allows patients to opt out of being administered or prescribed an opioid. House Bill 5153 incorporates the form into the Estates and Protected Individuals Code (EPIC). The bills take effect March 28, 2019.

**FISCAL IMPACT:** House Bill 5152 has modest fiscal implications for the Department of Health and Human Services (MDHHS), including promulgation and administration of rules to implement the use, recordkeeping, sharing, and revocation of the directive. House Bill 5153 would not have a fiscal impact on the state or local units of government.

### **THE APPARENT PROBLEM:**

Opioids have a high potential for dependence. For individuals in recovery from substance use disorder, even an opioid legally prescribed and administered for a legitimate medical purpose has the potential to cause a relapse. Legislation was offered to protect individuals from possible dependence or relapse by allowing them to have their preference formally documented and included in their medical records.

### **THE CONTENT OF THE BILLS:**

**House Bill 5152** adds Section 9145 to the Public Health Code to describe the provisions and functions of a nonopioid directive form and the conditions that allow for opioids to be administered. It exempts health facilities and health professionals from civil or criminal liability for good-faith action or inaction. The section also provides procedural outlines for the MDHHS.

A nonopioid directive form (or “form”), when included in an individual's medical records, instructs health professionals and emergency medical service personnel to neither administer an opioid nor offer an opioid prescription to a patient who has signed the form.

The form may be executed by an individual or by a guardian/patient advocate on behalf of an individual. If the form is presented to a health professional, the health professional must include it in the patient's medical records.

Additionally, the form may be revoked by an individual at any time by any means the individual is able to communicate. A guardian/patient advocate may revoke the form on behalf of his or her ward by providing a written notice to the relevant health professional.

### Exceptions

If a patient has a form on record, a prescriber<sup>1</sup> or a nurse under the order of a prescriber may administer an opioid if there is an emergency and the administration of an opioid is deemed medically necessary for treatment. If such an event occurs, the prescriber must ensure that the patient being treated is provided with information on substance use disorder services.

### Liability

The following parties are not subject to civil or criminal liability or professional disciplinary action under the bill for either failing to administer, prescribe, or dispense an opioid or inadvertently administering an opioid to a patient with a form, if the action or inaction was done reasonably and in good faith:

- A health professional whose scope of practice includes prescribing, administering, or dispensing controlled substances.
- A health facility or agency licensed under Article 17 of the Public Health Code.
- An employee of a health professional, facility, or agency.
- A medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator (defined as “emergency medical services personnel” in Section 20904 of the Code).

### Procedure and Rules

Under the bill, the MDHHS must create the form and make it available to the public via the MDHHS website. The MDHHS must also promulgate rules that outline the following:

- Procedures for recording a form in medical records (including electronic).
- Procedures for revoking a form.
- Procedures for ensuring that the recording, disclosure, or distribution of data relating to a form or the transmission of a form complies with state and federal confidentiality and consent laws and regulations.
- Exemptions for administering or prescribing an opioid to an individual who has executed a form in order to treat him or her for a substance use disorder.
- Exemptions for administering or prescribing an opioid to an individual who has executed a form if he or she is a hospice patient.

These rules must allow a health professional or health facility or agency to incorporate a nonopioid directive form into an existing patient form or documentation.

MCL 333.9145

---

<sup>1</sup> **Prescriber:** defined in Section 17708 of the Code as a licensed dentist, a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, a licensed doctor of podiatric medicine and surgery, a licensed physician's assistant, a licensed optometrist certified under Part 174 to administer and prescribe therapeutic pharmaceutical agents, an advanced practice registered nurse as that term is defined in Section 17201 who meets the requirements of Section 17211a, a licensed veterinarian, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or licensed doctor of osteopathic medicine and surgery.

**House Bill 5153** amends EPIC to include a nonopioid directive form under the powers prescribed to a guardian of a ward or legally incapacitated individual. Under the bill, guardians may execute, reaffirm, or revoke nonopioid directives on behalf of their wards.

EPIC requires guardians to report to the court at least annually on their wards' mental, physical, and social condition, as well as any developments. The bill adds a requirement to report whether the guardian executed, reaffirmed, or revoked a form on behalf of his or her ward in the past year.

Additionally, the bill prohibits a guardian from consenting to or approving inpatient hospitalization for a ward unless the guardian is expressly granted that power by court order. If the ward objects or actively refuses mental health treatment, the guardian or any other interested person must follow procedures outlined in Chapter 4 of the Michigan Mental Health Code to petition the court for an order to provide *involuntary mental health treatment*.

*Involuntary mental health treatment* means court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment as described in Section 468 of the Mental Health Code.

MCL 700.1106 and 700.5314

**BACKGROUND INFORMATION:**

According to Michigan's 2015 Prescription Drug and Opioid Abuse Task Force report,<sup>2</sup> Michigan ranked 10th in the country in per capita prescribing rates of opioids in 2012 and 18th for overdose deaths in 2011-2013. As of 2018, at least seven other states had adopted nonopioid directive forms in efforts to combat the opioid epidemic.

**ARGUMENTS:**

**For:**

Proponents argued that these bills provide another tool that may complement other recent legislative measures against opioid abuse. Additionally, supporters see the forms as offering more agency to patients who may feel that their personal preferences cannot contend with the expertise of their doctors.

**Against:**

No one testified or voted against the bills in House committee.

Legislative Analyst: Dana Adams  
Fiscal Analysts: Susan Frey  
Kevin Koorstra

---

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

---

<sup>2</sup> [http://www.michigan.gov/documents/snyder/Prescription\\_Drug\\_and\\_Opioid\\_Task\\_Force\\_Report\\_504140\\_7.pdf](http://www.michigan.gov/documents/snyder/Prescription_Drug_and_Opioid_Task_Force_Report_504140_7.pdf)