

# Legislative Analysis

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## NONOPIOID DIRECTIVE FORM

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

**House Bill 5152 (H-1) as reported from committee**  
**Sponsor: Rep. Sam Singh**

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

**House Bill 5153 (H-1) as reported from committee**  
**Sponsor: Rep. Edward J. Canfield, D.O.**

**Committee: Health Policy**  
**Complete to 3-20-18**

**BRIEF SUMMARY:** House Bill 5152 would amend the Public Health Code to provide for a nonopioid directive form, which would allow patients to opt out of being administered or prescribed an opioid. House Bill 5153 would incorporate the form into the Estates and Protected Individuals Code. The bills are tie-barred together, meaning neither can take effect unless both are enacted. Each bill would take effect 90 days after being enacted.

**FISCAL IMPACT:** House Bill 5152 has modest fiscal implications for the Department of Health and Human Services, 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:***

According to Michigan's 2015 Prescription Drug and Opioid Abuse Task Force report,<sup>1</sup> Michigan ranked 10<sup>th</sup> in the country in per capita prescribing rates of opioids in 2012 and 18<sup>th</sup> for overdose deaths in 2011-2013. As of 2016, at least four other states have adopted nonopioid directive forms in efforts to combat the opioid epidemic.

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.

These bills are intended 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**

House Bill 5152 would add Section 9145 to the Public Health Code, which would describe the provisions and functions of a nonopioid directive form and the conditions that would allow for administering opioids. It would exempt health facilities and professionals from civil or criminal liability for good-faith action or inaction. The proposed section would also provide procedural outlines for the Michigan Department of Health and Human Services (MDHHS).

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<sup>1</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)

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

The form could 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 could be revoked by an individual at any time by any means the individual is able to communicate. A guardian/patient advocate could 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 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 would ensure that the patient being treated is provided with information on substance use disorder services.

### ***Liability***

The following parties would not be 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, MDHHS would create the form and make it available to the public via the MDHHS website. MDHHS would also promulgate rules that outline procedures for:

- Recording a form in medical records (including electronic).
- Revoking a form.
- 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.

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.

### ***Definitions***

The bill would define the following terms:

**Health professional:** an individual who is licensed under Article 15 of the Public Health Code.

**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.

Proposed MCL 333.9145

### **House Bill 5153**

House Bill 5153 would amend the Estates and Protected Individuals Code (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 could execute, reaffirm, or revoke nonopioid directives on behalf of their wards.

EPIC currently 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 would add a requirement to report whether the guardian executed, reaffirmed, or revoked a form on behalf of his or her ward in the past year.

MCL 700.1106 and 700.5314

#### ***ARGUMENTS:***

##### ***For:***

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

##### ***Against:***

No one testified or voted against the bills in committee.

#### ***POSITIONS:***

The Michigan Guardianship Association supports both House Bill 5152 and House Bill 5153. (2-21-18)

The Michigan Health & Hospital Association supports House Bill 5152 in concept. (2-21-18)

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■ 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.