



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 618

132nd General Assembly
(As Introduced)

Rep. West

BILL SUMMARY

- Requires the Ohio Department of Mental Health and Addiction Services to develop a nonopioid directive form for use by a patient who does not want to be offered, prescribed, or administered an opioid analgesic.
 - Requires the form to be distributed to patients when discharged from community addiction services providers and to drug offenders when released from prison.
 - Specifies that a nonopioid directive becomes effective when signed and placed in the patient's medical record and that it can be revoked at any time.
 - Generally grants immunity to the following for administering, dispensing, or prescribing an opioid analgesic to a patient who is the subject of a nonopioid directive: emergency medical services personnel, pharmacists, and prescribers.
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CONTENT AND OPERATION

Nonopioid directives

A nonopioid directive allows a patient to indicate that the patient does not want to be offered, prescribed, administered, furnished, or otherwise provided with an opioid analgesic.¹

¹ R.C. 5119.58.

Form

The bill requires the Ohio Department of Mental Health and Addiction Services (ODMHAS) to develop – not later than one year after its effective date – a nonopioid directive form.² When developing the form, ODMHAS must seek input on its contents from prescribers, pharmacists, emergency medical services personnel, addiction treatment professionals, nursing homes, hospitals, ambulatory surgical facilities, and any other constituency the Department determines to be appropriate. ODMHAS also must make the form available on its website and in a format that can be downloaded free of charge and reproduced.

Distribution

The bill requires a nonopioid directive form to be distributed to the following:

- Each individual who has completed treatment with a community addiction services provider at the time of discharge from the provider;
- Each individual who served a prison term for a drug offense at the time of release from prison.³

It also provides that an individual who receives a form as required by the bill must not be pressured to sign it.

Voluntariness

The bill specifies that a patient's decision to sign a nonopioid directive form is voluntary.⁴

Effectiveness and revocation

A nonopioid directive does not become effective until the form is signed by the patient, or by that patient's representative, and placed in the patient's paper or electronic medical record. In the case of a minor patient, the patient's parent, guardian, or legal custodian is the patient's representative.⁵ A patient or representative may

² R.C. 5119.58.

³ R.C. 5119.582.

⁴ R.C. 5119.581.

⁵ R.C. 5119.581.



revoke a nonopioid directive at any time and in any manner that communicates the intent to revoke.⁶

Notice to the State Board of Pharmacy

An individual, or individual's delegate, who places a signed nonopioid directive in a patient's medical record must notify the State Board of Pharmacy that the patient has signed it and inform the Board about where the form is maintained.⁷

Rules related to nonopioid directives

The bill requires the ODMHAS Director to adopt rules – in accordance with the Administrative Procedure Act – governing the use of nonopioid directives.⁸ The rules must do all of the following:

- Specify procedures to ensure that a signed form is properly filed in a patient's medical record and that notice is sent to the Board of Pharmacy;
- Specify a marker for use in the Board of Pharmacy's Ohio Automated Rx Reporting System in order to identify a patient who has signed a nonopioid directive form;
- Specify procedures for transmitting, sharing, and distributing forms between health care providers, health care facilities, and emergency medical services personnel to ensure that protected health information is disclosed only in a manner consistent with state and federal law;
- Specify the circumstances under which a patient may authorize another individual to override the patient's nonopioid directive and procedures to accomplish an override.

Emergency situations

In an emergency situation, emergency medical services personnel are not required to inquire about the existence of a nonopioid directive for a patient or to determine if a patient is the subject of a nonopioid directive.⁹

⁶ R.C. 5119.584.

⁷ R.C. 5119.581.

⁸ R.C. 5119.583 and R.C. Chapter 119., not in the bill.

⁹ R.C. 5119.585.



Immunity for emergency services personnel

The bill grants immunity from criminal prosecution, civil liability, and professional discipline to emergency services personnel who administer or otherwise provide in the course of an emergency situation an opioid analgesic to a patient who is the subject of a nonopioid directive.¹⁰ To be eligible for immunity, the emergency medical services personnel must act in accordance with applicable law and must meet either of the following conditions:

- The personnel must not know that the patient is the subject of a nonopioid directive; or
- The personnel must believe – based on their professional judgment – that the patient's chances of recovery will be substantially improved by an opioid analgesic.

Pharmacists

When a valid prescription for an opioid analgesic is presented to a pharmacist or pharmacy intern for dispensing, neither the pharmacist nor intern is required under the bill to inquire about the existence of a nonopioid directive for the patient or to determine if the patient is the subject of a directive.¹¹

Immunity for pharmacists and pharmacy interns

The bill generally grants immunity from criminal prosecution, civil liability, and professional discipline to a pharmacist or pharmacy intern for actions associated with dispensing an opioid analgesic.¹² To be eligible for immunity from criminal prosecution, the pharmacist or intern cannot knowingly fail to comply with a patient's nonopioid directive. To be eligible for immunity from civil liability and professional discipline, a pharmacist or intern cannot fail to comply with a nonopioid directive in a manner that constitutes willful or wanton misconduct.

Prescribers

Like emergency medical services personnel and pharmacists, the bill generally grants prescribers and their employees, contractors, and delegates immunity from criminal prosecution, civil liability, and professional discipline for actions associated

¹⁰ R.C. 5119.585.

¹¹ R.C. 5119.586(A).

¹² R.C. 5119.586(B).



with offering, prescribing, administering, furnishing, or otherwise providing an opioid analgesic to a patient who has an effective nonopioid directive.¹³ To be eligible for immunity from criminal prosecution, the prescriber or prescriber's employee, contractor, or delegate cannot knowingly fail to comply with a signed directive. To be eligible for immunity from civil liability and professional discipline, the prescriber or prescriber's employee, contractor, or delegate cannot fail to comply with a directive in a manner that constitutes willful or wanton misconduct.

Insurance

The bill includes provisions addressing the impact of nonopioid directives on insurance. First, it specifies that the existence or nonexistence of a nonopioid directive for a patient does not do any of the following:

- Affect in any manner the sale, procurement, issuance, or renewal of a policy of life insurance or annuity, notwithstanding any term of a policy or annuity to the contrary;
- Modify in any manner or invalidate the terms of a policy of life insurance or annuity that is in effect on the bill's effective date;
- Impair or invalidate a policy of life insurance or annuity or any health benefit plan.¹⁴

Second, the bill prohibits a person authorized to engage in the business of insurance under Ohio law, a health insuring corporation, other health benefit plan, or a legal entity that is self-insured and provides benefits to employees or members from requiring an individual, as a condition of being insured or receiving benefits, to be the subject of a nonopioid directive or to revoke or refrain from being the subject of a nonopioid directive.¹⁵

Health care facilities

Like health insurers, the bill also prohibits a health care facility from requiring an individual, as a condition of receiving services, to be the subject of a nonopioid directive or to revoke or refrain from being the subject of one.¹⁶

¹³ R.C. 5119.587.

¹⁴ R.C. 5119.588.

¹⁵ R.C. 5119.589.

¹⁶ R.C. 5119.589.



HISTORY

ACTION

DATE

Introduced

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