

Am. Sub. H.B. 166  
As Passed by the Senate  
PRX006  
DPSCD51

\_\_\_\_\_ moved to amend as follows:

In line 170 of the title, after "4729.48," insert "4729.66,  
4729.661, 4729.662, 4729.663, 4729.664, 4729.665, 4729.666,  
4729.667, 4729.668,"

In line 346, after "4729.48," insert "4729.66, 4729.661,  
4729.662, 4729.663, 4729.664, 4729.665, 4729.666, 4729.667,  
4729.668,"

After line 49735, insert:

"Sec. 4729.66. (A)(1) As used in this section and sections  
4729.661 to 4729.668 of the Revised Code:

(a) "Minor" means an individual under eighteen years of age  
who is not emancipated.

For purposes of this section, an individual under eighteen  
years of age is emancipated only if the individual has married,  
has entered the armed services of the United States, has become  
employed and self-sustaining, or otherwise has become independent  
from the care and control of the individual's parent, guardian, or  
legal custodian.

(b) "Opioid analgesic" has the same meaning as in section  
3719.01 of the Revised Code.

(2) "Prescriber," notwithstanding section 4729.01 of the

<u>Revised Code, excludes both of the following:</u>	21
<u>(a) An optometrist licensed under Chapter 4725. of the</u>	22
<u>Revised Code to practice optometry under a therapeutic</u>	23
<u>pharmaceutical agents certificate;</u>	24
<u>(b) A veterinarian licensed under Chapter 4741. of the</u>	25
<u>Revised Code.</u>	26
<u>(B) Not later than one year after the effective date of this</u>	27
<u>section, the state board of pharmacy shall develop a non-opioid</u>	28
<u>directive form. The form shall specify that the patient who is the</u>	29
<u>subject of the form wishes not to be offered, prescribed,</u>	30
<u>administered, personally furnished, or otherwise provided with an</u>	31
<u>opioid analgesic. When developing the form, the board shall seek</u>	32
<u>input on the form's content from all of the following:</u>	33
<u>(1) Prescribers;</u>	34
<u>(2) Pharmacists;</u>	35
<u>(3) Emergency medical service personnel, firefighters, and</u>	36
<u>law enforcement officers;</u>	37
<u>(4) Addiction treatment professionals;</u>	38
<u>(5) Nursing homes;</u>	39
<u>(6) Hospitals;</u>	40
<u>(7) Ambulatory surgical facilities;</u>	41
<u>(8) Any other constituency that the board considers</u>	42
<u>appropriate.</u>	43
<u>The board shall make the form available on its internet web</u>	44
<u>site. The form shall be made available in a format that can be</u>	45
<u>downloaded free of charge and reproduced.</u>	46

Sec. 4729.661. A patient's decision to sign a non-opioid directive form is voluntary. A form does not become effective until it is signed by the patient to whom it pertains, or that individual's representative, and is placed in the patient's paper or electronic medical record. In the case of a patient who is a minor, the patient's representative is the patient's parent, guardian, or legal custodian.

An individual who places a signed non-opioid directive form in a patient's medical record, or that individual's delegate, shall notify the state board of pharmacy that the patient has signed a non-opioid directive form and where the form is maintained. If a form is revoked, the individual who is made aware of the revocation shall notify the board of this fact.

Sec. 4729.662. The state board of pharmacy shall adopt rules in accordance with Chapter 119. of the Revised Code to do all of the following:

(A) Specify procedures to ensure that a signed non-opioid directive form is properly filed in the medical record of the patient to whom it pertains and that a notification of its existence is sent to the board;

(B) If the board maintains a drug database pursuant to section 4729.75 of the Revised Code, specify a marker or other form of notification to be included in the database under the name and patient identifier of a patient who has signed a non-opioid directive form;

(C) Specify a procedure for the transmission, sharing, and distribution of a patient's non-opioid directive form between health care providers, health care facilities, emergency medical service personnel, firefighters, and law enforcement officers that ensures that protected health information is disclosed only in a manner that is consistent with applicable state and federal laws regarding the use and disclosure of such information;

(D) Specify the circumstances under which a patient may authorize another individual, including an attorney in fact under a durable power of attorney for health care created pursuant to sections 1337.11 to 1337.17 of the Revised Code, to override a patient's non-opioid directive form, and a procedure to accomplish an override.

Sec. 4729.663. The patient who is the subject of a non-opioid 85  
directive form, the patient's representative, or, if the patient 86  
is a minor, the patient's parent, guardian, or legal custodian, 87  
may revoke a non-opioid directive form at any time and in any 88  
manner that communicates the intent to revoke. 89

<u>Sec. 4729.664. In an emergency situation, emergency medical</u>	90
<u>service personnel, firefighters, and law enforcement officers are</u>	91
<u>not required to inquire about the existence of a non-opioid</u>	92
<u>directive form for a patient or determine if the patient is the</u>	93
<u>subject of a non-opioid directive form. If a patient is the</u>	94
<u>subject of a non-opioid directive form, if any of the foregoing</u>	95
<u>persons provide care to the patient in an emergency situation, and</u>	96
<u>if, at that time, those persons do not know that the patient is</u>	97
<u>the subject of a non-opioid directive form or if they believe</u>	98
<u>based on their professional judgment that the patient's chances of</u>	99
<u>recovery from injury would be substantially improved through use</u>	100
<u>of an opioid analgesic, the foregoing persons or emergency</u>	101
<u>department personnel are not subject to any of the following</u>	102
<u>associated with offering, prescribing, administering, personally</u>	103
<u>furnishing, or otherwise providing an opioid analgesic to the</u>	104
<u>patient if doing so is otherwise in accordance with applicable</u>	105
<u>law:</u>	106
<u>(A) Criminal prosecution;</u>	107
<u>(B) Liability for damages in a tort or other civil action for</u>	108
<u>injury, death, or loss to person or property;</u>	109
<u>(C) Professional disciplinary action.</u>	110

Sec. 4729.665. (A) A pharmacist to whom a valid prescription for an opioid analgesic is presented for dispensing is neither required to inquire about the existence of a non-opioid directive form for the patient who is the subject of the prescription nor required to determine if the patient is the subject of a non-opioid directive form.

(B)(1)(a) Except as provided in division (B)(1)(b) of this section, a pharmacist is not subject to criminal prosecution associated with dispensing an opioid analgesic to a patient who is the subject of an opioid directive form.

(b) A pharmacist is subject to criminal prosecution associated with dispensing an opioid analgesic to a patient who is the subject of a non-opioid directive form if the pharmacist knowingly failed to comply with the patient's form.

(2) Except as provided in division (B)(2)(b) of this section, a pharmacist is not subject to either of the following associated with dispensing an opioid analgesic to a patient who is the subject of an opioid directive form:

(i) Liability for damages in tort or other civil action for injury, death, or loss to person or property;

(ii) Professional disciplinary action.

(b) A pharmacist may be subject to the liability and action described in divisions (B)(2)(a)(i) and (ii) of this section associated with dispensing an opioid analgesic to a patient who is the subject of a non-opioid directive form if the pharmacist failed to comply with the form in a manner that constitutes willful or wanton misconduct.

Sec. 4729.666. (A)(1) Except as provided in division (A)(2) of this section, a prescriber, employee or contractor of a prescriber, or delegate of a prescriber is not subject to criminal prosecution associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to a patient who has an effective non-opioid directive form.

(2) A prescriber, employee or contractor of a prescriber, or delegate of a prescriber is subject to criminal prosecution associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to a patient who has an effective non-opioid directive form if that individual knowingly failed to comply with the patient's form.

(B)(1) Except as provided in division (B)(2) of this section, a prescriber, employee or contractor of a prescriber, or delegate of a prescriber is not subject to liability for either of the following associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to a patient who has an effective non-opioid directive form:

(a) Liability for damages in a tort or other civil action for injury, death, or loss to person or property;

(b) Professional disciplinary action.

(2) A prescriber, employee or contractor of a prescriber, or delegate of a prescriber may be subject to the liability and action described in divisions (B)(1)(a) and (b) of this section associated with offering, prescribing, administering, personally furnishing, or otherwise providing an opioid analgesic to a patient who has an effective non-opioid directive form if that individual failed to comply with the form in a manner that constitutes willful or wanton misconduct.

Sec. 4729.667. The existence or nonexistence of a non-opioid 167  
directive form for a patient shall not do any of the following: 168

(A) Affect in any manner the sale, procurement, issuance, or 169  
renewal of a policy of life insurance or annuity, notwithstanding 170  
any term of a policy or annuity to the contrary; 171

(B) Modify in any manner or invalidate the terms of a policy 172  
of life insurance or annuity that is in effect on the effective 173  
date of this section; 174

(C) Impair or invalidate a policy of life insurance or 175  
annuity or any health benefit plan. 176

Sec. 4729.668. No prescriber, health care facility, or other health care provider, person authorized to engage in the business of insurance under this state under Title XXXIX of the Revised Code, health insuring corporation, other health care benefit plan, legal entity that is self-insured and provides benefits to its employees or members, government entity, or other person shall require that an individual be the subject of a non-opioid directive form, or shall require an individual to revoke or refrain from being the subject of a non-opioid directive form, as a condition of being insured or receiving health care benefits or services."

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS

**Non-opioid directive form** 188

**R.C. 4729.60 through 4729.668** 189

Reinstates House-added provisions removed by the Senate requiring the development of a non-opioid directive form and modifies those provisions by: 190

--Requiring the State Board of Pharmacy (instead of the State Board of Emergency Medical, Fire, and Transportation Services) to develop the form and make it available free of charge; 193

--Requiring that the Pharmacy Board be notified whenever a form is revoked; 196

--Specifying that pharmacists, prescribers, contractors and employees of prescribers, and delegates of prescribers are not 198

subject to criminal liability for providing an opioid analgesic to 200  
a patient with an effective non-opioid directive form unless they 201  
knowingly failed to comply with the patient's form. 202

--Specifying that pharmacists, prescribers, contractors and 203  
employees of prescribers, and delegates of prescribers are not 204  
subject to civil liability or professional disciplinary action for 205  
providing an opioid analgesic to a patient with an effective 206  
non-opioid directive form unless the non-compliance was in a 207  
manner that constitutes willful or wanton misconduct. 208