

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

H. B. No. 618

Representative West

A BILL

To enact sections 5119.58, 5119.581, 5119.582,
5119.583, 5119.584, 5119.585, 5119.586,
5119.587, 5119.588, and 5119.589 of the Revised
Code to require the Department of Mental Health
and Addiction Services to develop a non-opioid
directive form.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5119.58, 5119.581, 5119.582,
5119.583, 5119.584, 5119.585, 5119.586, 5119.587, 5119.588, and
5119.589 of the Revised Code be enacted to read as follows:

Sec. 5119.58. (A) As used in this section and sections
5119.581 to 5119.589 of the Revised Code:

(1) "Emergency medical services personnel" has the same
meaning as in section 2133.21 of the Revised Code.

(2) "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 19
independent from the care and control of the individual's 20
parent, guardian, or legal custodian. 21

(3) "Prescriber" means any of the following: 22

(a) An advanced practice registered nurse who holds a 23
current, valid license issued under Chapter 4723. of the Revised 24
Code and is designated as a clinical nurse specialist, certified 25
nurse-midwife, or certified nurse practitioner; 26

(b) A physician authorized under Chapter 4731. of the 27
Revised Code to practice medicine and surgery or osteopathic 28
medicine and surgery; 29

(c) A physician assistant who is licensed under Chapter 30
4730. of the Revised Code, holds a valid prescriber number 31
issued by the state medical board, and has been granted 32
physician-delegated prescriptive authority. 33

(4) "Opioid analgesic" has the same meaning as in section 34
3719.01 of the Revised Code. 35

(B) Not later than one year after the effective date of 36
this section, the department of mental health and addiction 37
services shall develop a non-opioid directive form. The form 38
shall specify that the patient who is the subject of the form 39
desires not to be offered, prescribed, administered, personally 40
furnished, or otherwise provided with an opioid analgesic. When 41
developing the form, the department shall seek input on the 42
form's content from all of the following: 43

(1) Prescribers; 44

(2) Pharmacists; 45

(3) Emergency medical services personnel; 46

<u>(4) Addiction treatment professionals;</u>	47
<u>(5) Nursing homes;</u>	48
<u>(6) Hospitals;</u>	49
<u>(7) Ambulatory surgical facilities;</u>	50
<u>(8) Any other constituency that the department determines to be appropriate.</u>	51 52
<u>The department shall make the form available on its internet web site. The form shall be made available in a format that can be downloaded free of charge and reproduced.</u>	53 54 55
<u>Sec. 5119.581. 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.</u>	56 57 58 59 60 61 62
<u>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.</u>	63 64 65 66 67
<u>Sec. 5119.582. (A) A non-opioid directive form shall be distributed to both of the following:</u>	68 69
<u>(1) Each individual who has completed treatment with a community addiction services provider, as defined in section 5119.01 of the Revised Code, at the time of discharge from such treatment;</u>	70 71 72 73

(2) Each individual who served a prison term for a drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, at the time of release from prison. 74
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(B) An individual who receives a non-opioid directive form as described in this section shall not be pressured to sign it. 78
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Sec. 5119.583. The director of mental health and addiction services shall adopt rules in accordance with Chapter 119. of the Revised Code to do all of the following: 80
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(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 state board of pharmacy; 83
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(B) If the state board of pharmacy maintains a drug database pursuant to section 4729.75 of the Revised Code, specify a marker or other form of notification that shall be included in that database under the name and patient identifier of a patient who has signed a non-opioid directive form; 87
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(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, and emergency medical services personnel 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; 92
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(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 99
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override a patient's non-opioid directive form, and a procedure 103
to accomplish an override. 104

Sec. 5119.584. The patient who is the subject of a non- 105
opioid directive form, the patient's representative, or, if the 106
patient is under eighteen years of age, the patient's parent, 107
guardian, or legal custodian, may revoke a non-opioid directive 108
form at any time and in any manner that communicates the intent 109
to revoke. 110

Sec. 5119.585. In an emergency situation, emergency 111
medical services personnel are not required to inquire about the 112
existence of a non-opioid directive form for a patient or 113
determine if the patient is the subject of a non-opioid 114
directive form. If a patient is the subject of a non-opioid 115
directive form, if emergency medical services personnel or 116
emergency department personnel provide care to the patient in an 117
emergency situation, and if, at that time, the personnel do not 118
know that the patient is the subject of a non-opioid directive 119
form or if they believe based on their professional judgment 120
that the patient's chances of recovery would be substantially 121
improved through use of an opioid analgesic, the emergency 122
medical services personnel or emergency department personnel are 123
not subject to any of the following associated with offering, 124
prescribing, administering, personally furnishing, or otherwise 125
providing an opioid analgesic to the patient if doing so is 126
otherwise in accordance with applicable law: 127

(A) Criminal prosecution; 128

(B) Liability for damages in a tort or other civil action 129
for injury, death, or loss to person or property; 130

(C) Professional disciplinary action. 131

Sec. 5119.586. (A) A pharmacist or pharmacy intern to whom 132
a valid prescription for an opioid analgesic is presented for 133
dispensing is neither required to inquire about the existence of 134
a non-opioid directive form for the patient who is the subject 135
of the prescription nor is required to determine if the patient 136
is the subject of a non-opioid directive form. 137

(B) (1) Except on evidence that a pharmacist or pharmacy 138
intern knowingly failed to comply with a patient's non-opioid 139
directive form, the pharmacist or pharmacy intern shall not be 140
subject to criminal prosecution associated with dispensing the 141
opioid analgesic. 142

(2) Except on evidence that a pharmacy or pharmacy intern 143
failed to comply with a patient's non-opioid directive form in a 144
manner that constitutes willful or wanton misconduct, the 145
pharmacist or pharmacy intern shall not be subject to either of 146
the following associated with dispensing the opioid analgesic: 147

(a) Liability for damages in tort or other civil action 148
for injury, death, or loss to person or property; 149

(b) Professional disciplinary action. 150

Sec. 5119.587. (A) Except on evidence that a prescriber, 151
employee or contractor of a prescriber, or delegate of a 152
prescriber knowingly failed to comply with a non-opioid 153
directive form signed by a patient or the patient's 154
representative, that individual shall not be subject to criminal 155
prosecution associated with offering, prescribing, 156
administering, personally furnishing, or otherwise providing an 157
opioid analgesic to a patient who has an effective non-opioid 158
directive form. 159

(B) Except on evidence that a prescriber, employee or 160

contractor of a prescriber, or delegate of a prescriber failed 161
to comply with a non-opioid directive form signed by a patient 162
or the patient's representative in a manner that constitutes 163
willful or wanton misconduct, that individual shall not be 164
subject to liability for either of the following associated with 165
offering, prescribing, administering, personally furnishing, or 166
otherwise providing an opioid analgesic to a patient who has an 167
effective non-opioid directive form: 168

(1) Liability for damages in a tort or other civil action 169
for injury, death, or loss to person or property; 170

(2) Professional disciplinary action. 171

Sec. 5119.588. The existence or nonexistence of a non- 172
opioid directive form for a patient shall not do any of the 173
following: 174

(A) Affect in any manner the sale, procurement, issuance, 175
or renewal of a policy of life insurance or annuity, 176
notwithstanding any term of a policy or annuity to the contrary; 177

(B) Modify in any manner or invalidate the terms of a 178
policy of life insurance or annuity that is in effect on the 179
effective date of this section; 180

(C) Impair or invalidate a policy of life insurance or 181
annuity or any health benefit plan. 182

Sec. 5119.589. No prescriber, health care facility, or 183
other health care provider, person authorized to engage in the 184
business of insurance under this state under Title XXXIX of the 185
Revised Code, health insuring corporation, other health care 186
benefit plan, legal entity that is self-insured and provides 187
benefits to its employees or members, government entity, or 188
other person shall require that an individual be the subject of 189

<u>a non-opioid directive form, or shall require an individual to</u>	190
<u>revoke or refrain from being the subject of a non-opioid</u>	191
<u>directive form, as a condition of being insured or receiving</u>	192
<u>health care benefits or services.</u>	193