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**BILL ANALYSIS**



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House Bill 5152 (Substitute H-2 as passed by the House)  
House Bill 5153 (Substitute H-1 as passed by the house)  
Sponsors: Representative Sam Singh (H.B. 5152)  
Representative Edward J. Canfield, D.O. (H.B. 5153)  
House Committee: Health Policy  
Senate Committee: Health Policy

Date Completed: 12-11-18

**CONTENT**

**House Bill 5152 (H-2) would amend the Public Health Code to do the following:**

- **Require the Department of Health and Human Services (DHHS) to develop a nonopioid directive form that would indicate that an individual who executed the form or who had a form executed on the individual's behalf could not be administered or offered a prescription for an opioid.**
- **Allow an individual, or his or her guardian or patient advocate, to execute a nonopioid directive form on the individual's behalf.**
- **Allow a prescriber, or a practical nurse or registered professional nurse acting on the order of the prescriber, to administer an opioid to an individual who had executed a form if he or she were being treated at a hospital or in a setting outside the hospital in the case of an emergency, and the administration of the opioid was medically necessary.**
- **Specify that certain entities would not be subject to civil or criminal liability or professional disciplinary action for failing to administer or prescribe an opioid, or for the inadvertent administration of an opioid, to an individual who had executed a form, if the failure to act or act were done reasonably and in good faith.**
- **Require the DHHS to promulgate rules to implement the bill's provisions, including procedures to record a nonopioid directive form in a medical record and procedures to revoke a form.**

**House Bill 5153 (H-1) would amend the Estates and Protected Individuals Code (EPIC) to do the following:**

- **Specify that a guardian would have the power to execute and revoke a nonopioid directive form on behalf of his or her ward.**
- **Require a guardian's report on the ward's condition to indicate whether the guardian had executed, reaffirmed, or revoked a form on behalf of the ward in the past year.**

The bills would be tie-barred, and each bill would take effect 90 days after its enactment.

## **House Bill 5152 (H-2)**

### **Nonopioid Directive Form**

Specifically, the bill would require the DHHS to develop a nonopioid directive form indicating to health professionals and emergency services personnel that, except as otherwise provided below or in rules promulgated by the Department, an individual who had executed the form or who had a form executed on his or her behalf could not be administered or offered a prescription for an opioid. The DHHS would have to include on the form instructions on how it could be revoked and any other information the Department considered relevant. The DHHS would have to make the form available to the public on its website.

"Emergency medical services personnel" would mean that term as defined in Section 20904: a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator.

"Health professional" would mean an individual who was licensed under Article 15 (Occupations) of the Public Health Code.

### **Executing & Revoking the Nonopioid Directive Form**

Under the bill, an individual could execute a form on his or her own behalf. A guardian or patient advocate also could execute the form on behalf of the individual. If a form were executed by or on behalf of an individual and was presented to a health professional, he or she would have to obtain a copy of the form and include it in the individual's medical record.

"Guardian" would mean a person with the powers and duties, provided below, to make medical treatment decisions on behalf of a patient to the extent granted by court order under section 5314 of Public Act 386 of 1998 (which prescribes the powers and duties of a guardian).

"Patient advocate" would mean an individual designated to make medical treatment decisions for a patient under the Estates and Protected Individuals Code.

An individual could revoke a form executed by himself or herself at any time and in any manner by which he or she was able to communicate the intent to revoke it. A guardian or patient advocate could revoke the form on behalf of an individual at any time by issuing the revocation in writing and notifying the individual's health professional of the revocation.

### **Health Professionals & Prescribers**

The bill would allow a prescriber who held a controlled substances license, or a practical nurse or registered professional nurse acting on the order of the prescriber, to administer an opioid to an individual who had executed a form or had a form executed on his or her behalf if the individual were being treated at a hospital or in a setting outside of a hospital in the case of an emergency, and in the prescriber's professional opinion, the administration of the opioid was medically necessary.

If an opioid were administered, the prescriber would have to ensure that the individual was provided with information on substance use disorder services, as that term is defined in Section 6230: substance use disorder prevention services or substance use disorder treatment and rehabilitation services, or both, as those terms defined in the Mental Health Code.

(Prescriber would mean that term as defined under the Public Health Code.)

Except as otherwise provided by law, the following would not be subject to civil or criminal liability or professional disciplinary action for failing to administer, prescribe, or dispense an opioid, or for the inadvertent administration of an opioid, to an individual who had executed a nonopioid directive form or who had a form executed on his or her behalf, if the failure to act or act were done reasonably and in good faith:

- A health professional whose scope of practice included prescribing, administering, or dispensing of a controlled substance.
- A health facility or agency licensed under Article 17 (Facilities and Agencies)
- A health professional's employee.
- An employee of a health facility or agency listed under Article 17.
- Emergency medical services personnel.

#### Promulgation of Rules

The bill would require the Department to promulgate rules to implement the bill. The rules would have to include all of the following:

- Procedures to record a form in a medical record, including an electronic medical record.
- Procedures to revoke a form.
- Procedures to ensure that the recording, disclosure, or distribution of data relating to a form or its transmission complied with state and federal confidentiality and consent laws.
- Exemptions for administering or prescribing of an opioid to an individual who had executed a form or had a form executed on his or her behalf if the opioid were administered or prescribed to treat the individual for a substance use disorder.
- Exemptions for administering or prescribing of an opioid to an individual who had executed a form or had a form executed on his or her behalf if the individual were a hospice patient.

The rules would have to allow a health professional or health facility or agency to incorporate a nonopioid directive form into an existing patient form or into other documentation used by the health professional or health facility or agency.

#### **House Bill 5153 (H-1)**

Under the Estates and Protected Individuals Code, a guardian has certain powers and duties with respect to a ward, which include the following:

- Custody over the ward's person, and the power to establish his or her place of residence in or outside of the State.
- To provide for the ward's care, comfort, and maintenance and, when appropriate, arrange for his or her training and education.
- To execute, reaffirm, and revoke a do-not-resuscitate (DNR) order or a physician orders for scope of treatment (POST) form on behalf of a ward.

Under the bill, the guardian would have the power to execute, reaffirm, and revoke a nonopioid directive form on behalf of a ward.

A guardian has the power to give the consent or approval necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. The power of a guardian to execute a DNR order or a POST form does not affect or limit the guardian's power to consent to a physician's order to withhold resuscitative measures in a hospital. Under the bill, this also would apply to a guardian's power to execute a nonopioid directive form.

A guardian has the duty to report the ward's condition and the condition of his or her estate that is subject to the guardian's possession or control, as required by the court, but at least annually. The guardian also must serve the report on the ward and interested persons as specified in the Michigan Court Rules. A report must contain certain information, including the ward's current mental, physical, and social conditions, medical treatment he or she has received, and whether the guardian has executed, reaffirmed, or revoked a DNR order or POST form on his or her behalf during the past year. The bill would require the report to include whether the guardian had executed, reaffirmed, or revoked a nonopioid directive form on behalf of the ward during the past year.

Proposed MCL 333.9145 (H.B. 5152)  
MCL 700.1106 & 700.5314 (H.B. 5153)

Legislative Analyst: Tyler VanHuyse

## **FISCAL IMPACT**

### **House Bill 5152 (H-2)**

The bill could have a small fiscal impact on the Department of Health and Human Services (DHHS) and no fiscal impact on local government. Fiscal costs could increase to the extent that rule promulgation and administration of the directive form proposed in the bill created additional costs relative to current operations.

### **House Bill 5153 (H-1)**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Abbey Frazier  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.