

**SUBSTITUTE FOR
HOUSE BILL NO. 5261**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 9145 (MCL 333.9145), as added by 2018 PA 554.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9145. (1) The department shall develop a nonopioid
2 directive form indicating to health professionals and emergency
3 medical services personnel that, except as otherwise provided in
4 subsection (3) or in rules promulgated by the department under
5 subsection (5), an individual who has executed the form or who has
6 had a form executed on the individual's behalf must not be
7 administered an opioid or offered a prescription for an opioid. The
8 department shall include on the nonopioid directive form
9 instructions on how the form may be revoked and any other

1 information that the department considers relevant. The department
2 shall make the form available to the public on the department's
3 internet website.

4 (2) An individual may execute a nonopioid directive form on
5 his or her own behalf. A guardian or patient advocate of an
6 individual may execute a nonopioid directive form on behalf of the
7 individual. If a nonopioid directive form is executed by or on
8 behalf of an individual and is presented to a health professional,
9 the health professional shall obtain a copy of the form and include
10 the copy in the individual's medical record. An individual may
11 revoke a nonopioid directive form executed by himself or herself at
12 any time and in any manner by which he or she is able to
13 communicate his or her intent to revoke the form. A patient
14 advocate or guardian may revoke a nonopioid directive form on
15 behalf of an individual at any time by issuing the revocation in
16 writing and providing notice of the revocation to the individual's
17 health professional or his or her delegatee.

18 (3) A prescriber who holds a controlled substances license
19 under article 7 or a health professional who is a practical nurse
20 or registered professional nurse and is acting on the order of the
21 prescriber may administer an opioid to an individual who has
22 executed a nonopioid directive form or who has had a nonopioid
23 directive form executed on his or her behalf if ~~the~~**any of the**
24 **following apply:**

25 (a) **The** individual is being treated at a hospital or in a
26 setting outside of a hospital in the case of an emergency and, in
27 the prescriber's professional opinion, the administration of the
28 opioid is medically necessary to treat the individual. If an opioid
29 is administered under this ~~subsection,~~**subdivision**, the prescriber

1 shall ensure that the individual is provided with information on
2 substance use disorder services as that term is defined in section
3 6230.

4 **(b) The opioid is for intraoperative use.**

5 (4) Except as otherwise provided by law, the following are not
6 subject to civil or criminal liability or professional disciplinary
7 action for failing to administer, prescribe, or dispense an opioid,
8 or for the inadvertent administration of an opioid, to an
9 individual who has executed a nonopioid directive form or who has
10 had a nonopioid directive form executed on his or her behalf, if
11 the failure to act or act was done reasonably and in good faith:

12 (a) A health professional whose scope of practice includes the
13 prescribing, administering, or dispensing of a controlled
14 substance.

15 (b) A health facility or agency licensed under article 17.

16 (c) An employee of a health professional.

17 (d) An employee of a health facility or agency licensed under
18 article 17.

19 (e) Emergency medical services personnel.

20 (5) Subject to subsection (6), the department shall promulgate
21 rules to implement this section. The rules must include, but not be
22 limited to, all of the following:

23 (a) Procedures to record a nonopioid directive form in a
24 medical record, including an electronic medical record.

25 (b) Procedures to revoke a nonopioid directive form.

26 (c) Procedures to ensure that the recording, disclosure, or
27 distribution of data relating to a nonopioid directive form or the
28 transmission of a nonopioid directive form complies with state and
29 federal confidentiality and consent laws, rules, and regulations.

1 (d) Exemptions for administering or prescribing an opioid to
2 an individual who has executed a nonopioid directive form or who
3 has had a nonopioid directive form executed on his or her behalf if
4 the opioid is administered or prescribed to treat the individual
5 for a substance use disorder.

6 (e) Exemptions for administering or prescribing an opioid to
7 an individual who has executed a nonopioid directive form or who
8 has had a nonopioid directive form executed on his or her behalf if
9 the individual is a hospice patient.

10 (6) The rules promulgated under this section must allow a
11 health professional or health facility or agency licensed under
12 article 17 to incorporate a nonopioid directive form into an
13 existing patient form or into other documentation used by the
14 health professional or health facility or agency.

15 (7) As used in this section:

16 (a) "Emergency medical services personnel" means that term as
17 defined in section 20904.

18 (b) "Guardian" means a person with the powers and duties to
19 make medical treatment decisions on behalf of a patient to the
20 extent granted by court order under section 5314 of the estates and
21 protected individuals code, 1998 PA 386, MCL 700.5314.

22 (c) "Health professional" means an individual who is licensed
23 under article 15.

24 (d) "Nonopioid directive form" or "form" means the nonopioid
25 directive form developed by the department under subsection (1).

26 (e) "Patient advocate" means an individual designated to make
27 medical treatment decisions for a patient under sections 5506 to
28 5515 of the estates and protected individuals code, 1998 PA 386,
29 MCL 700.5506 to 700.5515.

1 (f) "Prescriber" means that term as defined in section 17708.