

# HOUSE BILL NO. 5261

August 17, 2021, Introduced by Reps. Hammoud, Hornberger, Whiteford, Aiyash, Yaroch and Cavanagh and referred to the Committee on Health Policy.

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

1 subsection (3) or in rules promulgated by the department under  
2 subsection (5), an individual who has executed the form or who has  
3 had a form executed on the individual's behalf must not be  
4 administered an opioid or offered a prescription for an opioid. The  
5 department shall include on the nonopioid directive form  
6 instructions on how the form may be revoked and any other  
7 information that the department considers relevant. The department  
8 shall make the form available to the public on the department's  
9 internet website.

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

24 (3) A prescriber who holds a controlled substances license  
25 under article 7 or a health professional who is a practical nurse  
26 or registered professional nurse and is acting on the order of the  
27 prescriber may administer an opioid to an individual who has  
28 executed a nonopioid directive form or who has had a nonopioid  
29 directive form executed on his or her behalf if ~~the~~ **any of the**

1 following apply:

2 (a) The individual is being treated at a hospital or in a  
3 setting outside of a hospital in the case of an emergency and, in  
4 the prescriber's professional opinion, the administration of the  
5 opioid is medically necessary to treat the individual. If an opioid  
6 is administered under this ~~subsection~~, **subdivision**, the prescriber  
7 shall ensure that the individual is provided with information on  
8 substance use disorder services as that term is defined in section  
9 6230.

10 (b) The opioid is for intraoperative use.

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

18 (a) A health professional whose scope of practice includes the  
19 prescribing, administering, or dispensing of a controlled  
20 substance.

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

22 (c) An employee of a health professional.

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

25 (e) Emergency medical services personnel.

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

29 (a) Procedures to record a nonopioid directive form in a

1 medical record, including an electronic medical record. **The rules**  
2 **must require a medical record to clearly display whether an**  
3 **individual has executed a form or has had a form executed on the**  
4 **individual's behalf in a manner similar to whether the individual**  
5 **has any allergies.**

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

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

11 (d) Exemptions for administering or prescribing an opioid to  
12 an individual who has executed a nonopioid directive form or who  
13 has had a nonopioid directive form executed on his or her behalf if  
14 the opioid is administered or prescribed to treat the individual  
15 for a substance use disorder.

16 (e) Exemptions for administering or prescribing an opioid to  
17 an individual who has executed a nonopioid directive form or who  
18 has had a nonopioid directive form executed on his or her behalf if  
19 the individual is a hospice patient.

20 (6) The rules promulgated under this section must allow a  
21 health professional or health facility or agency licensed under  
22 article 17 to incorporate a nonopioid directive form into an  
23 existing patient form or into other documentation used by the  
24 health professional or health facility or agency.

25 (7) As used in this section:

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

28 (b) "Guardian" means a person with the powers and duties to  
29 make medical treatment decisions on behalf of a patient to the

1 extent granted by court order under section 5314 of the estates and  
2 protected individuals code, 1998 PA 386, MCL 700.5314.

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

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

7 (e) "Patient advocate" means an individual designated to make  
8 medical treatment decisions for a patient under sections 5506 to  
9 5515 of the estates and protected individuals code, 1998 PA 386,  
10 MCL 700.5506 to 700.5515.

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