

2018 Regular Session

SENATE BILL NO. 90

BY SENATOR MILLS

HEALTH CARE. Provides relative to a voluntary nonopioid directive form. (8/1/18)

1 AN ACT

2 To enact Subpart D of Part 1 of Subchapter A of Chapter 5-D of Title 40 of the Louisiana  
3 Revised Statutes of 1950, to be comprised of R.S. 40:1156.1, relative to a voluntary  
4 nonopioid directive form; to provide for voluntary prescription opioid opt-out  
5 opportunity for patients; to provide for a form; to provide for access to the form; to  
6 provide for immunity; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Subpart D of Part 1 of Subchapter A of Chapter 5-D of Title 40 of the  
9 Louisiana Revised Statutes of 1950, comprised of R.S. 40:1156.1, is hereby enacted to read  
10 as follows:

11 **SUBPART D. PRESCRIPTION NONOPIOID DIRECTIVE**

12 **§1156.1. Voluntary nonopioid directive; form; immunity**

13 **A. The Louisiana Department of Health, in consultation with the office**  
14 **of behavioral health, shall establish a voluntary nonopioid directive form and**  
15 **shall publish the form prominently on the department's website for public use.**

16 **B. A patient may execute and file a voluntary nonopioid directive form**  
17 **with a prescribing practitioner when the patient does not wish to be issued a**

1 prescription or medication order for an opioid. Upon receipt of a voluntary  
2 nonopioid directive form, a prescribing practitioner shall date and affix his  
3 signature to the form in the presence of the patient as evidence of acceptance,  
4 document the receipt in the patient's medical record, and provide a signed copy  
5 of the form to the patient.

6 C. The voluntary nonopioid directive form established by the  
7 department shall allow a patient or when the patient is unable to consent for  
8 himself, any person duly authorized and empowered to provide medical consent  
9 for the patient under the provisions of R.S. 40:1151.4, to revoke the directive,  
10 orally or in writing, for any reason, at any time.

11 D. An electronically transmitted prescription to a pharmacy shall be  
12 presumed to be valid for the purposes of this Section, and a pharmacist shall not  
13 be held in violation of this Section for dispensing a controlled substance in  
14 contradiction to a voluntary nonopioid form.

15 E. No prescribing practitioner who has signed and executed a nonopioid  
16 directive form with a patient acting with reasonable care shall be liable for  
17 damages in a civil action or subject to criminal prosecution or be deemed to  
18 have violated the standard of care for such prescribing practitioner for refusing  
19 to issue a prescription or medication order for an opioid pursuant to a  
20 voluntary nonopioid directive form.

21 F. No person acting in good faith as a duly authorized guardian or health  
22 care representative pursuant to Subsection C of this Section shall be liable for  
23 damages in a civil action or subject to criminal prosecution for revoking or  
24 overriding a voluntary nonopioid directive form.

25 G. No prescribing practitioner shall be liable for damages in a civil  
26 action, subject to criminal prosecution, or deemed to have violated the standard  
27 of care for a prescribing practitioner's profession for issuing a prescription for  
28 or administering a controlled substance containing an opioid to a patient when  
29 the patient and the prescribing practitioner have not executed and filed a

1            **voluntary nonopioid directive form under the provisions of this Subpart.**

2            **H. A prescribing practitioner who willfully fails to comply with a**  
 3            **patient's voluntary nonopioid directive form may be subject to disciplinary**  
 4            **action pursuant to rules promulgated by his health profession licensing board.**

The original instrument was prepared by Christine Arbo Peck. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl M. Serrett.

DIGEST

SB 90 Reengrossed

2018 Regular Session

Mills

Proposed law requires LDH to establish and post a voluntary nonopioid directive form on its website to allow a patient to voluntarily opt-out of receiving opioid prescriptions from his prescribing practitioner(s). Proposed law allows a patient and his prescribing practitioner to sign, execute, and file the nonopioid directive. Proposed law allows a patient to appoint a duly authorized guardian or health care representative to override an opt-out directive orally or in writing, for any reason, at any time.

Proposed law provides immunity from civil, criminal, and professional licensure sanctions for pharmacists who dispense an opioid based on an electronic prescription, prescribing practitioners acting with reasonable care for refusing to issue an opioid prescription, an authorized guardian or health care representative for revoking the nonopioid directive, and a prescribing practitioner for issuing a prescription for or administering a controlled substance containing an opioid when he was not a party to the executed and filed nonopioid directive.

Proposed law authorizes health professional licensing boards that regulate prescribers to promulgate rules regarding disciplinary action against a prescribing practitioner who willfully fails to comply with a patient's voluntary nonopioid directive form.

Effective August 1, 2018.

(Adds R.S. 40:1156.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Provides additional clarification on the steps required to execute the nonopioid directive to confirm that the directive is only applicable between the prescriber and patient that executed the directive.
2. Provides that the duly authorized representative is empowered by provisions of current law regarding medical consent.
3. Removes specific exemptions from liability for emergency department prescribers and makes exemption applicable to all prescribers who are not a party to the nonopioid directive.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.