HOUSE BILL 318

Short Title:	Opioid Prescription & Treatment Opt Out Act.	(Public)
Sponsors:	Representatives Belk, Black, Dobson, and White (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Health, if favorable, Insurance, if favorable, Rules, Calendar, and Operations of the House	

March 12, 2019

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE RIGHT OF PATIENTS TO ELECT NONOPIOID PRESCRIPTIONS AND TREATMENT, ESTABLISHING A PROCESS BY WHICH PATIENTS MAY OPT OUT OF OPIOID PRESCRIPTIONS AND TREATMENT, AND REQUIRING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO DEVELOP AND MAKE AVAILABLE ON ITS INTERNET WEB SITE AN OFFICIAL FORM FOR PATIENTS TO VOLUNTARILY OPT OUT OF OPIOID PRESCRIPTIONS AND TREATMENT.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The Opioid Prescription and Treatment Opt Out Act."

SECTION 2. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.17A. Portable voluntary nonopioid advance directives; official form.**

(a) Legislative Intent. – It is the intent of the General Assembly to recognize the desire and right of a patient to elect nonopioid prescriptions and treatment. This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) Definitions. – The following definitions apply in this section:

(1) Authorized practitioner. – A physician, physician assistant, or nurse practitioner licensed and in good standing in this State.

(2) Patient's representative. – In the case of a minor, a parent with custody of the minor or the legal guardian or legal custodian of the minor. In all other cases, a legal guardian, or a health care agent as defined in G.S. 32A-16.

(c) Consent and Procedures for Documenting Patient Opt Out. – An authorized practitioner may issue a portable voluntary nonopioid advance directive form for a patient with consent obtained as follows:

(1) With the consent of the patient, if the patient is a competent adult.

(2) With the consent of the patient's parent, legal guardian, or legal custodian, if the patient is a minor.

(3) With the consent of the patient's representative, if the patient is not a minor but is incapable of making an informed decision regarding consent for the opt out.

The authorized practitioner shall document the basis for the portable voluntary nonopioid advance directive form in the patient's medical record. Both the authorized practitioner or the authorized practitioner's designee and the patient or the patient's representative shall sign the form. The patient or the patient's representative shall sign the original form in the presence of the physician or the physician's designee, whether in paper or electronic form, and the signed form shall be placed in the patient's medical record. When the signature of the patient or the patient's representative is on a separate copy of the form, the original form must indicate in the appropriate signature field that the signature is "on file."

(d) Official Voluntary Nonopioid Advance Directive Form. – The Department shall, in consultation with the North Carolina Medical Board and the North Carolina Board of Pharmacy, develop and update, as necessary, an official voluntary nonopioid advance directive form that indicates to all health care providers that the named patient shall not be offered, prescribed, supplied with, or otherwise administered a controlled substance containing an opioid. The Department shall provide notification and a copy of the form, as well as any subsequent updates to the form, to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In addition, the Department shall make the form easily accessible on its Internet Web site, in a format that can be downloaded or copied. At a minimum, the official voluntary nonopioid advance directive form shall include fields for all of the following:

(1) The name of the patient.

(2) An advisory that a patient is not required to have a form.

(3) The name, telephone number, and signature of the authorized practitioner authorizing the form.

(4) The name and contact information of the health care provider who prepared the form with the patient or the patient's representative.

(5) Information on who agreed (i.e., the patient or the patient's representative) to the options selected on the form.

(6) A range of options for nonopioid prescriptions and treatment.

(7) An option to exempt from the nonopioid advance directive opioids used to treat opioid dependence or other substance use disorders.

(8) The patient or patient representative's name, contact information, and signature.

(9) The effective date of the form and any dates the form is reviewed.

(10) A prominent advisory that directions in an official voluntary nonopioid advance directive form may suspend, while those directions are in effect, any conflicting directions in a patient's previously executed health care power of attorney or other legally authorized instrument.

(11) An advisory that the form may be revoked by the patient or the patient's representative.

(12) The official voluntary nonopioid advance directive form shall also include the following statement written in boldface type directly above the signature line: "You are not required to sign this form to receive treatment." The form may be approved by reference to a standard form that meets the requirements of this subsection.

(e) Immunity for Good-Faith Compliance. – No authorized practitioner, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding opioid prescription and treatment from a patient in good-faith reliance on an original, official voluntary nonopioid advance directive form adopted pursuant to subsection (d) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the form or the identity of the patient and (ii) the provider does not have actual knowledge of the revocation of the form.

No authorized practitioner, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification board for failure to follow an official voluntary nonopioid advance directive form adopted pursuant to subsection (d) of this section if the provider had no actual knowledge of the existence of the form.

(f) Civil Liability and Disciplinary Action for Knowing or Willful Noncompliance. – A knowing or willful failure to comply with an official voluntary nonopioid advance directive form adopted pursuant to subsection (d) of this section is a ground for (i) liability in a civil action for damages suffered as a result of the violation, (ii) disciplinary action by the appropriate professional licensing or certification board, or (iii) both.

(g) Health Care Facility Policies and Procedures Regarding Forms. – A health care facility may develop policies and procedures that authorize the facility's providers to accept a portable official voluntary nonopioid advance directive form as if it were an order of the medical staff of that facility. This section does not prohibit an authorized practitioner in a health care facility from issuing a written order, other than a portable official voluntary nonopioid advance directive form, to allow a patient to opt not to receive opioid prescription and treatment or to use, withhold, or withdraw additional medical interventions as provided in the form, in accordance with acceptable medical practice and the facility's policies.

(h) Validity of Pre-Existing Forms. – Nothing in this section shall affect the validity of a portable voluntary nonopioid advance directive form in existence prior to the effective date of this section.

(i) Validity of Forms Originating Outside of North Carolina. – Notwithstanding any provision of this section to the contrary, a similar voluntary nonopioid advance directive form originating in a jurisdiction other than North Carolina is valid in this State if it appears to have been issued in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 3.(a) By January 1, 2020, the Department of Health and Human Services shall, in consultation with the North Carolina Board of Medicine and the North Carolina Board of Pharmacy, (i) develop an official voluntary nonopioid advance directive form that complies with the requirements of G.S. 90-21.17A, as enacted by Section 2 of this act, (ii) make the form easily accessible on its Internet Web site, in a format that can be downloaded or copied, and (iii) provide notification and a copy of the official voluntary nonopioid advance directive form to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

SECTION 3.(b) This section is effective when it becomes law.

SECTION 4. G.S. 130A-466(a) reads as rewritten:

"**§ 130A-466. Filing requirements.**

(a) A person may submit any of the following documents and the revocations of these documents to the Secretary of State for filing in the Advance Health Care Directive Registry established pursuant to this Article:

…

(5) A voluntary nonopioid advance directive under Article 1B of Chapter 90 of the General Statutes."

SECTION 5. Except as otherwise provided, this act becomes effective January 1, 2020.