MISSISSIPPI LEGISLATURE REGULAR SESSION 2018

By: Representative Sykes

To: Public Health and Human Services

HOUSE BILL NO. 1406

AN ACT TO REQUIRE THE DEPARTMENT OF HEALTH TO CREATE A VOLUNTARY NONOPIOID DIRECTIVE FORM; TO PROVIDE THAT THE DEPARTMENT SHALL DEVELOP REGULATIONS REGARDING THE FORM; TO PROVIDE CERTAIN IMMUNITY FROM LIABILITY; TO AUTHORIZE PRACTITIONER LICENSING BOARDS TO CONDITION OR SUSPEND THE LICENSE OF OR ASSESS A FINE AGAINST A PRACTITIONER WHO RECKLESSLY OR NEGLIGENTLY FAILS TO COMPLY WITH A PATIENT'S VOLUNTARY NONOPIOID DIRECTIVE FORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) (a) In consultation with a statewide professional organization representing physicians licensed to practice medicine in all its branches, statewide organizations representing nursing homes, registered professional nurses, emergency medical systems and a statewide organization representing health care facilities, the Department of Health shall develop and publish a uniform voluntary nonopioid directive form which may be used by a patient to deny or refuse the administration or prescribing of a controlled substance containing an opioid by a practitioner.

(b) The voluntary nonopioid directive form developed by the department in accordance with paragraph (a) of this subsection

shall indicate to all prescribing practitioners and health care facilities that the named patient shall not be offered, prescribed, supplied with or otherwise administered a controlled substance containing an opioid.

(c) The voluntary nonopioid directive form shall be posted in a downloadable format on the department's publicly accessible Internet website.

(2) (a) A patient may execute and file a voluntary nonopioid directive form with a practitioner or other authority authorized by the department to accept the voluntary nonopioid directive form for filing. Each practitioner or other person authorized by the department to accept a voluntary nonopioid directive form for filing shall date and affix his signature to the form in the presence of the patient as evidence of acceptance and shall provide a signed copy of the form to the patient.

(b) The patient executing and filing a voluntary nonopioid directive form with a practitioner shall sign and date the form in the presence of the practitioner, a designee of the practitioner or other person authorized by the department to accept a voluntary nonopioid directive form for filing. In the case of a patient who is unable to execute and file a voluntary nonopioid form, the patient may designate a duly authorized guardian or health care proxy to execute and file the form in accordance with subsection (1) of this section.

(c) A patient may revoke the voluntary nonopioid directive form for any reason and may do so by written or oral means.

(d) Notwithstanding subsection (1) of this section, before signing a voluntary nonopioid directive form a practitioner may, if deemed appropriate, assess the patient's personal and family history of alcohol or drug abuse and evaluate the patient's risk for medication misuse or abuse. In evaluating such risks, the practitioner shall access the system to determine whether an unusual or suspect pattern for the prescribing of controlled substances containing opioids to the patient has been reported to the system. If a practitioner reasonably believes that a patient is at risk for substance misuse or abuse or a practitioner believes in the practitioner's expert medical opinion that for any other reason the nonopioid directive is appropriate, the practitioner shall sign the form. The practitioner signing the nonopioid directive form shall note doing so in the patient's medical record.

SECTION 2. (1) The department shall adopt and publish regulations for the implementation of the voluntary nonopioid directive form. The regulations shall include, but not be limited to:

(a) A standard form for the recording and transmission of the voluntary nonopioid directive form, which shall include verification by the patient's practitioner and which shall comply

with the written consent requirements of the Public Health Service Act (58 Stat. 682, 42 USC Section 290 dd-2(b)) and 42 CFR Pt. 2 (relating to confidentiality of alcohol and drug abuse patient records), provided that the voluntary nonopioid directive form shall also provide the basic procedures necessary to revoke the voluntary nonopioid directive form.

(b) Procedures to record the voluntary nonopioid directive form in the patient's medical record or, if available, the patient's interoperable electronic medical record and in the system.

(c) Requirements and procedures for a patient to appoint a duly authorized guardian or health care proxy to override a previously filed voluntary nonopioid directive form and circumstances under which an attending practitioner may override a previously filed voluntary nonopioid directive form based on documented medical judgment which shall be recorded in the patient's medical record.

(d) Procedures to ensure that any recording, sharing or distributing of data relative to the voluntary nonopioid directive form complies with all federal and state confidentiality laws.

(e) Appropriate exemptions for practitioners and other health care providers and emergency medical personnel to prescribe or administer a controlled substance containing an opioid when, in their professional medical judgment, a controlled substance containing an opioid is necessary.

(2) The department shall publish the regulations on its publicly accessible Internet website.

(3) A written prescription that is presented at an outpatient pharmacy or a prescription that is electronically transmitted to an outpatient pharmacy shall be presumed to be valid for the purposes of this section, and a pharmacist in an outpatient setting shall not be held in violation of this section for dispensing a controlled substance containing an opioid or other controlled substance in contradiction to a voluntary nonopioid directive form, except upon evidence that the pharmacist acted knowingly against the voluntary nonopioid directive form.

SECTION 3. (a) No practitioner or employee of a practitioner acting in good faith shall be subject to criminal or civil liability or be considered to have engaged in unprofessional conduct for failing to offer or administer a prescription or medication order for a controlled substance containing an opioid under the voluntary nonopioid directive form.

(b) No person acting as a representative or an agent under a health care proxy shall be subject to criminal or civil liability for making a decision under Section 2(1)(c) in good faith.

SECTION 4. If allowed under the laws governing a practitioner licensing board, a licensing board may limit, condition or suspend the license of or assess a fine against a

practitioner who recklessly or negligently fails to comply with a patient's voluntary nonopioid directive form.

SECTION 5. Health insurance policies providing coverage in the State of Mississippi, and medical providers providing a diagnosis and a plan for treatment for pain in the State of Mississippi, shall provide coverage for and provide options to patients for evidence-based nonopioid treatment for pain, including, but not limited to, chiropractic care, osteopathic manipulative treatment and acupuncture treatment.

SECTION 6. This act shall take effect and be in force from and after July 1, 2018.