

The Non-Opioid Directive (NOD) Act

Background:

According to the National Institute on Drug Abuse, nearly 50,000 people in the US died from opioid involved overdoses in 2019. That same year, an estimated 10.1 million people aged 12 or older misused opioids.

Specifically, 9.7 million people misused prescription pain relievers. The Centers for Disease Control

Prevention estimates that the total “economic burden” of prescription opioid misuse alone in the US is \$78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal involvement. The COVID-19 pandemic has just exacerbated this, with an expected 30% increase in overdose deaths for 2020, primarily driven by opioids and synthetic opioids such as fentanyl.

State Efforts:

To date eight states have passed legislation establishing a non-opioid directive form that allows patients to notify health professionals that they do not wish to be treated with opioids. The directive is non-mandatory, and patients are free to opt-out at any time. It is intended to create a dialogue between patients and providers around opioids. Physicians can also override the directive in emergency situations.

The following states have passed directives: West Virginia, Louisiana, Alaska, Connecticut, Michigan, Pennsylvania, Massachusetts, and Alabama

Federal Legislation:

Representatives David McKinley (R-WV), Lisa Blunt Rochester (D-DE), John Curtis (R-UT), and Tom O’Halloran (D-AZ) introduced the Non-Opioid Directive Act based on the legislation that has already passed in some states.

Key highlights of the bill below:

- Instructs the Department of Health and Human Services (HHS) to develop a non-opioid Pain Management Directive that will be included in a patient’s medical record.
- It is voluntary. An individual may revoke a non-opioid pain management form executed by themselves at any time and in any manner. A guardian or patient advocate may also revoke the form for a minor at any time and in any manner.

- Requires each group health plan or health insurance issuer to make the form available to each enrollee; and requires each group health plan or health insurance issuer to include a notice of the individual's choice for non-opioid pain management to healthcare providers.
- Requires group health plans and health insurance issuers to provide a copy of the non-opioid pain management form during annual enrollment, specifically asking the individual to opt-in or opt-out.
- Allows an exception for providers to override the directive in the event a patient is receiving emergency treatment in a hospital or outside of a hospital; or receiving the opioid through intraoperative use during surgery; and in the treating healthcare professional's opinion, after due consideration of other options and inquiring about a history of opioid use, the administration of the opioid is medically necessary to treat the individual.
- The legislation extends full liability protections (criminal and civil) for providers who mistakenly administer an opioid when a patient has signed a directive or for failing to administer or prescribe an opioid.