

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 738

Short Title: Opioid Prescription & Treatment Opt Out Act. (Public)

Sponsors: Representatives Belk, White, Dobson, and Cunningham (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Health, if favorable, Judiciary I

April 13, 2017

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, DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES, TO DEVELOP AN OPIOID PRESCRIPTION AND TREATMENT OPT OUT FORM AND MAKE THE FORM AVAILABLE TO PHYSICIANS AND PATIENTS ON THE DEPARTMENT'S INTERNET WEB SITE.

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 opioid prescription and treatment opt out form.**

(a) 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) As used in this section, "patient's representative" means (i) in the case of a minor, a parent with custody of the minor or the legal guardian or legal custodian of the minor and (ii) in all other cases, a legal guardian or a health care agent, as defined in G.S. 32A-16.

(c) A physician may issue a portable opioid prescription and treatment opt out 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 or guardian, 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 physician shall document the basis for the opioid prescription and treatment opt out form in the patient's medical record. Both the physician or the physician's designee and the patient or the patient's representative shall sign the opt out form. The patient or the patient's representative shall sign the original opt out form in the presence of the physician or the physician's designee, whether in paper or electronic form, and the signed opt out form shall be placed in the patient's medical record. When the signature of the patient or the patient's



1 representative is on a separate copy of the opt out form, the original opt out form must indicate  
2 in the appropriate signature field that the signature is "on file."

3 (d) The Division of Mental Health, Developmental Disabilities, and Substance Abuse  
4 Services, in consultation with the Commission for Mental Health, Developmental Disabilities,  
5 and Substance Abuse Services, the North Carolina Medical Board, and the North Carolina  
6 Board of Pharmacy, shall develop an official opioid prescription and treatment opt out form  
7 that indicates to all prescribing practitioners and health care facilities that the named patient  
8 shall not be offered, prescribed, supplied with, or otherwise administered a controlled substance  
9 containing an opioid. At a minimum, the official opt out form shall include fields for all of the  
10 following:

- 11 (1) The name of the patient.
- 12 (2) An advisory that a patient is not required to have an opt out form.
- 13 (3) The name, telephone number, and signature of the physician, physician  
14 assistant, or nurse practitioner authorizing the opt out form.
- 15 (4) The name and contact information of the health care provider who prepared  
16 the opt out form with the patient or the patient's representative.
- 17 (5) Information on who agreed (i.e., the patient or the patient's representative) to  
18 the options selected on the opt out form.
- 19 (6) A range of options for nonopioid prescriptions and treatment.
- 20 (7) The patient or patient representative's name, contact information, and  
21 signature.
- 22 (8) The effective date of the opt out form and any dates the opt out form is  
23 reviewed.
- 24 (9) A prominent advisory that directions in an opioid prescription and treatment  
25 opt out form may suspend, while those directions are in effect, any  
26 conflicting directions in a patient's previously executed health care power of  
27 attorney or other legally authorized instrument.
- 28 (10) An advisory that the opioid prescription and treatment opt out form may be  
29 revoked by the patient or the patient's representative.
- 30 (11) The official opt out form shall also include the following statement written  
31 in boldface type directly above the signature line: "You are not required to  
32 sign this form to receive treatment." The form may be approved by reference  
33 to a standard form that meets the requirements of this subsection.

34 (e) No physician, emergency medical professional, hospice provider, or other health  
35 care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by  
36 any professional licensing or certification agency for withholding opioid prescription and  
37 treatment from a patient in good-faith reliance on an original opt out form adopted pursuant to  
38 subsection (d) of this section, provided that (i) there are no reasonable grounds for doubting the  
39 validity of the opt out form or the identity of the patient and (ii) the provider does not have  
40 actual knowledge of the revocation of the opt out form. No physician, emergency medical  
41 professional, hospice provider, or other health care provider shall be subject to criminal  
42 prosecution, civil liability, or disciplinary action by any professional licensing or certification  
43 agency for failure to follow an opt out form adopted pursuant to subsection (d) of this section if  
44 the provider had no actual knowledge of the existence of the opt out form.

45 (f) A health care facility may develop policies and procedures that authorize the  
46 facility's provider to accept a portable opt out form as if it were an order of the medical staff of  
47 that facility. This section does not prohibit a physician in a health care facility from issuing a  
48 written order, other than a portable opt out form, to allow a patient to opt not to receive opioid  
49 prescription and treatment or to use, withhold, or withdraw additional medical interventions as  
50 provided in the opt out form, in accordance with acceptable medical practice and the facility's  
51 policies.

1 (g) Nothing in this section shall affect the validity of portable opioid prescription and  
2 treatment opt out forms in existence prior to the effective date of this section."

3 **SECTION 3.(a)** By January 1, 2018, the Department of Health and Human  
4 Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse  
5 Services, in consultation with the Commission for Mental Health, Developmental Disabilities,  
6 and Substance Abuse Services, the North Carolina Medical Board, and the North Carolina  
7 Board of Pharmacy, shall develop and publish on its Internet Web site an official opioid  
8 prescription and treatment opt out form that complies with the requirements of G.S. 90-21.17A,  
9 as enacted by Section 2 of this act, in a format that can be downloaded.

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

11 **SECTION 4.** Except as otherwise provided, this act becomes effective January 1,  
12 2018.