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SENATE BILL DRS45052-MG-7B

Short Title:	Establish Non-Opioid Treatment Alternatives.	(Public)
Sponsors:	Senator Hise (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT DIRECTING HEALTH CARE PROVIDERS TO INITIATE ACUTE OR CHRONIC PAIN MANAGEMENT CARE WITH NON-OPIOID TREATMENT ALTERNATIVES, WHENEVER POSSIBLE; DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO DEVELOP AND MAKE AVAILABLE ON ITS INTERNET WEB SITE A UNIFORM VOLUNTARY NON-OPIOID DIRECTIVE FORM; ESTABLISHING A PROCESS FOR PATIENTS TO VOLUNTARILY ELECT NON-OPIOID PAIN MANAGEMENT CARE; AND ESTABLISHING INSURANCE COVERAGE FOR NON-OPIOID PAIN MANAGEMENT CARE.

The General Assembly of North Carolina enacts:

PART I. NON-OPIOID DIRECTIVE FOR PROVIDERS OF PAIN MANAGEMENT CARE

SECTION 1.1. G.S. 90-106 reads as rewritten:

"**§ 90-106. Prescriptions and labeling.**

…

(a3) Limitation on Prescriptions Upon Initial Consultation for Acute or Chronic Pain. – ~~A~~ Upon the initial consultation and treatment of a patient for acute or chronic pain, a practitioner, as a first line of treatment, shall provide the patient with a referral to, or a prescription for, any of the following alternatives to targeted controlled substances, when appropriate:

(1) Acupuncture.
(2) Chiropractic care.
(3) Massage therapy.
(4) Occupational therapy.
(5) Osteopathic manipulative treatment.
(6) Physical therapy.

In managing treatment for a patient's acute or chronic pain, a practitioner shall, whenever possible, administer nonpharmacological modalities or medications that are less addictive alternatives to targeted controlled substances.

If a practitioner determines that a targeted controlled substance is the appropriate treatment modality for a patient for acute pain, the practitioner may not prescribe more than a five-day supply of any targeted controlled substance upon the initial consultation and treatment of ~~a~~ the patient for acute pain, unless the prescription is for post-operative acute pain relief for use immediately following a surgical procedure. A practitioner shall not prescribe more than a seven-day supply of any targeted controlled substance for post-operative acute pain relief immediately following a surgical procedure. Upon any subsequent consultation for the same

pain, the practitioner may issue any appropriate renewal, refill, or new prescription for a targeted controlled ~~substance.~~ substance after evaluating the appropriateness of nonpharmacological modalities or medications that are less addictive alternatives to targeted controlled substances. This subsection does not apply to prescriptions for controlled substances issued by a practitioner who orders a controlled substance to be wholly administered in a hospital, nursing home licensed under Chapter 131E of the General Statutes, hospice facility, ~~or~~ residential care facility, as defined in ~~G.S. 14-32.2(c1). This subsection does not apply to prescriptions for controlled substances issued by a practitioner who orders a controlled substance to be wholly administered in an~~ G.S. 14-32.2(c1), emergency facility, veterinary hospital, or animal hospital, as defined in G.S. 90-181.1. A practitioner who acts in accordance with the limitation on prescriptions as set forth in this subsection ~~shall be~~ is immune from any civil liability or disciplinary action from the practitioner's occupational licensing agency for acting in accordance with this subsection.

(a4) Definitions. – As used in ~~this subsection,~~ subsection (a3) of this section, the following terms have the following meanings:

(1) Acute pain. – Pain, whether resulting from disease, accident, intentional trauma, or other cause, that the practitioner reasonably expects to last for three months or less. The term does not include chronic pain or pain being treated as part of cancer care, hospice care, palliative care, or medication-assisted treatment for substance use disorder. The term does not include pain being treated as part of cancer care, hospice care, or palliative care provided by a person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes.

(2) Chronic pain. – Pain that typically lasts for longer than three months or that lasts beyond the time of normal tissue healing.

(3) Surgical procedure. – A procedure that is performed for the purpose of structurally altering the human body by incision or destruction of tissues as part of the practice of medicine or a procedure that is performed for the purpose of structurally altering the animal body by incision or destruction of tissues as part of the practice of veterinary medicine. This term includes the diagnostic or therapeutic treatment of conditions or disease processes by use of instruments such as lasers, ultrasound, ionizing, radiation, scalpels, probes, or needles that cause localized alteration or transportation of live human tissue, or live animal tissue in the practice of veterinary medicine, by cutting, burning, vaporizing, freezing, suturing, probing, or manipulating by closed reduction for major dislocations and fractures, or otherwise altering by any mechanical, thermal, light-based, electromagnetic, or chemical means.

…."

PART II. PATIENT-INITIATED NON-OPIOID DIRECTIVE FOR PAIN MANAGEMENT CARE

SECTION 2.1.(a) Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.17A. Voluntary non-opioid directives; official form.**

(a) Definitions. – The following definitions apply in this Article:

(1) Commission. – The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Department. – The Department of Health and Human Services.

(3) Health care provider. – An individual who is licensed to prescribe, administer, dispense, or distribute controlled substances, or a representative or agent of that individual.

(4) Patient representative. – Any of the following:

a. In the case of a minor, a parent with custody of the minor or the legal guardian or legal custodian of the minor.

b. In all other cases, a legal guardian, or a health care agent as defined in G.S. 32A-16.

(b) Uniform Voluntary Non-Opioid Directive Form. – The Department, in consultation with the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, the North Carolina Medical Board, and the North Carolina Board of Pharmacy, shall develop a uniform non-opioid directive form that indicates to all prescribing health care providers that the named patient shall not be offered, prescribed, supplied with, or otherwise administered an opioid medication. The Department shall make the form easily accessible on its Internet Web site, in a format that can be downloaded or copied.

(c) Voluntary Execution and Filing of Patient-Initiated Form. – A patient may exercise the right to elect non-opioid prescriptions and treatment by voluntarily executing and filing a uniform voluntary non-opioid directive form with a health care provider or other person authorized by the Department to accept and file the form. The patient may exercise this right by signing and dating the form in the presence of the health care provider or other authorized person. In the case of a patient who is unable to voluntarily execute and file the form on the patient's own behalf, a duly authorized patient representative may exercise this right on behalf of a patient by executing and filing the form in accordance with this section. Each health care provider or other person authorized by the Department to accept a uniform voluntary non-opioid directive form for filing shall date and affix his or her signature to the form in the presence of the patient or a duly authorized patient representative as evidence of acceptance, and provide a copy of the form to the patient or duly authorized patient representative, as appropriate.

Prior to signing the form, a health care provider may, as the health care provider deems 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 the patient's risk for medication misuse or abuse, the health care provider shall review the information in the controlled substances reporting system, established under Article 5E of this Chapter, pertaining to the patient. If a health care provider reasonably believes that a patient is at risk for opioid misuse or abuse or that, in the health care provider's professional medical judgment, a non-opioid directive is appropriate for a patient, then the health care provider shall date and affix his or her signature to the form in the presence of the patient or a duly authorized patient representative as evidence of acceptance, and provide a copy of the form to the patient.

(d) Effect of Form. – In managing treatment for a patient's pain, a health care provider shall, whenever possible, honor the patient's voluntary non-opioid directive form by administering less addictive, non-opioid medications or nonpharmacological modalities as a first line of treatment.

(e) Revocation of Form. – A patient may for any reason revoke, verbally or in writing, a uniform voluntary non-opioid directive form by notifying a health care provider or other person authorized by the Department to accept and file the form. The health care provider or other authorized person shall document the revocation in the patient's medical record.

(f) Rules. – The Department, in consultation with the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, the North Carolina Medical Board, and the North Carolina Board of Pharmacy, shall adopt rules establishing all of the following:

(1) A list of persons, in addition to health care providers, who are authorized to accept and file uniform voluntary non-opioid directive forms and notices of revocation.

(2) A standard form for the recording and transmission of voluntary non-opioid directive forms, which at a minimum shall (i) include space for verification of the non-opioid directive by the patient's health care provider and (ii) meet the

applicable confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended.

(3) Procedures for recording a voluntary non-opioid directive form in the patient's medical record.

(4) Procedures for a patient to revoke his or her own duly executed and filed voluntary non-opioid directive form.

(5) Requirements and procedures for a patient representative to override a duly executed and filed voluntary non-opioid directive form.

(6) Circumstances under which an attending health care provider may override a duly executed and filed voluntary non-opioid directive form based on documented and professional medical judgment, which shall be recorded in the patient's medical record.

(7) Procedures to ensure that any recording, sharing, or distribution of data relative to the voluntary non-opioid directive form complies with all federal and State confidentiality laws.

(8) Appropriate exemptions for health care providers and emergency medical personnel to prescribe or administer opioid medications when, in their professional medical judgment, an opioid medication is necessary.

(9) Continuing education requirements for health care providers that include, at a minimum, requirements for completing not less than four hours annually on effective alternatives to the use of opioids that focus on the use of nonpharmacological modalities for pain management, specifically acupuncture, chiropractic care, massage therapy, occupational therapy, osteopathic manipulative treatment, and physical therapy.

(g) Immunity for Pharmacists. – Each written or electronic prescription for a controlled substance that is presented or transmitted to a pharmacy subject to the requirements of G.S. 90-85.21 or G.S. 90-85.21A is presumed valid for purposes of this section. No pharmacist licensed to practice in this State shall be held in violation of this section for dispensing a controlled substance containing an opioid or other controlled substance that contradicts a voluntary non-opioid directive form, except upon evidence that the pharmacist acted knowingly against the voluntary non-opioid directive form.

(h) Civil and Criminal Immunity for Health Care Providers. – No health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by an occupational licensing agency for any of the following:

(1) Failure to offer, prescribe, dispense, or administer a controlled substance containing an opioid medication to a patient in good-faith reliance on a voluntary non-opioid directive form executed in accordance with this section, if both of the following are true:

a. There are no reasonable grounds for the health care provider to doubt the validity of the voluntary non-opioid directive form or the identity of the patient.

b. The health care provider does not have actual knowledge of the patient's revocation of the voluntary non-opioid directive form.

(2) Failure to follow a voluntary non-opioid directive form executed in accordance with this section if the health care provider had no actual knowledge of the existence of the voluntary non-opioid directive form.

(i) Civil and Criminal Immunity for Patient Representatives. – No person acting as a patient representative shall be subject to criminal or civil liability for acting in good faith under this section."

SECTION 2.1.(b) By October 1, 2019, the Department of Health and Human Services, in consultation with the Commission for Mental Health, Developmental Disabilities,

and Substance Abuse Services, the North Carolina Medical Board, and the North Carolina Board of Pharmacy, shall develop and publish on its Internet Web site a uniform opioid prescription and treatment opt out form that complies with the requirements of G.S. 90-21.17A, as enacted by Section 2.1(a) of this act, in a format that can be downloaded and copied.

SECTION 2.1.(c) Subsection (b) of this section is effective when it becomes law.

PART III. INSURANCE COVERAGE FOR NON-OPIOID PAIN MANAGEMENT CARE.

SECTION 3.1.(a) Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-51-56. Coverage for non-opioid pain management care.**

(a) Every health benefit plan offered by an insurer must provide coverage for evidence-based non-opioid pain management care. Evidence-based non-opioid pain management care includes at least all of the following treatments:

(1) Acupuncture.
(2) Chiropractic care.
(3) Massage therapy.
(4) Occupational therapy.
(5) Osteopathic manipulative treatment.
(6) Physical therapy.

(b) Evidence-based non-opioid pain management care shall be considered a rehabilitation and habilitation service under the Patient Protection and Affordable Care Act, P.L. 111-148, as amended, and applicable corresponding regulations.

(c) Coverage for evidence-based non-opioid pain management care offered under this section shall not be subject to annual or lifetime numerical limits on visits for the treatment of pain.

(d) The amount of coinsurance, copayments, and deductible for evidence-based non-opioid pain management care shall be the same as the amount of coinsurance, copayments, and deductible for primary care services.

(e) The amount of provider reimbursement by an insurer for evidence-based non-opioid pain management care shall be no less than seventy-five percent (75%) of the billing code rate."

SECTION 3.1.(b) G.S. 135-48.51 is amended by adding a new subdivision to read:

"(14) G.S. 58-51-56, Coverage for non-opioid pain management care."

SECTION 3.1.(c) Subsections (a) and (b) of this section become effective October 1, 2019, and apply to health benefit plan contracts issued, renewed, or amended on or after that date.

PART IV. EFFECTIVE DATE

SECTION 4.1. Except as otherwise indicated, this act becomes effective January 1, 2020.