



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB5355

Introduced 2/9/2024, by Rep. Lindsey LaPointe

#### SYNOPSIS AS INTRODUCED:

New Act  
215 ILCS 5/370c.3 new  
305 ILCS 5/5-55 new

Creates the Nonopioid Alternatives for Pain Act. Requires the Department of Public Health to develop and publish an educational pamphlet regarding the use of nonopioid alternatives for pain treatment. Provides that a health care practitioner shall exercise professional judgment in selecting appropriate treatment modalities for pain in accordance with specified Centers for Disease Control and Prevention guidelines, including the use of nonopioid alternatives whenever nonopioid alternatives exist. Requires a health care practitioner who prescribes an opioid drug to provide certain information to the patient, discuss certain topics, and document the reasons for the prescription. Requires the Department to develop a nonopioid directive form for patients. Sets forth provisions concerning exceptions, execution of a nonopioid directive, opioid administration to a patient with a nonopioid directive, and limitations of liability. Amends the Illinois Insurance Code. Provides that when a licensed health care practitioner prescribes a nonopioid medication for the treatment of acute pain, it shall be unlawful for a health insurance issuer to deny coverage of the nonopioid prescription drug in favor of an opioid prescription drug or to require the patient to try an opioid prescription drug before providing coverage. Provides that in establishing and maintaining its drug formulary, a health insurance issuer shall ensure that no nonopioid drug approved by the Food and Drug Administration for the treatment or management of pain shall be disadvantaged or discouraged, with respect to coverage or cost sharing, relative to any opioid or narcotic drug for the treatment or management of pain. Amends the Medical Assistance Article of the Illinois Public Aid Code. Provides that whenever a licensed health care practitioner prescribes a nonopioid medication for the treatment of acute pain, neither the Department of Healthcare and Family Services nor a managed care organization shall deny coverage of the nonopioid prescription drug in favor of an opioid prescription drug or require a patient to try an opioid prescription drug prior to providing coverage of the nonopioid prescription drug. Makes other changes.

LRB103 37186 RPS 67305 b

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Nonopioid Alternatives for Pain Act.

6 Section 3. Findings. The General Assembly finds that every  
7 competent adult has the fundamental right of  
8 self-determination regarding decisions pertaining to that  
9 adult's own health, including the right to refuse an opioid  
10 drug.

11 Section 5. Definitions. As used in this Act:

12 "Department" means the Department of Public Health.

13 "Emergency medical services personnel" has the meaning  
14 given to that term in Section 3.5 of the Emergency Medical  
15 Services (EMS) Systems Act.

16 "Health care practitioner" means a person licensed or  
17 registered by the Department of Financial and Professional  
18 Regulation under the following Acts: the Medical Practice Act  
19 of 1987, the Nurse Practice Act, the Clinical Psychologist  
20 Licensing Act, the Illinois Optometric Practice Act of 1987,  
21 the Illinois Physical Therapy Act, the Pharmacy Practice Act,  
22 the Physician Assistant Practice Act of 1987, the Clinical

1 Social Work and Social Work Practice Act, the Nursing Home  
2 Administrators Licensing and Disciplinary Act, the Illinois  
3 Occupational Therapy Practice Act, the Podiatric Medical  
4 Practice Act of 1987, the Respiratory Care Practice Act, the  
5 Professional Counselor and Clinical Professional Counselor  
6 Licensing and Practice Act, the Illinois Speech-Language  
7 Pathology and Audiology Practice Act, the Illinois Dental  
8 Practice Act, the Illinois Dental Practice Act, or the  
9 Behavior Analyst Licensing Act.

10 "Nonopioid directive form" means the form developed under  
11 Section 20.

12 "Prescriber" has the meaning given to that term in  
13 subsection (mm) of Section 102 of the Illinois Controlled  
14 Substances Act.

15 Section 10. Nonopioid alternatives pamphlet. The  
16 Department of Public Health shall develop and publish on its  
17 website an educational pamphlet regarding the use of nonopioid  
18 alternatives for the treatment of acute nonoperative, acute  
19 perioperative, subacute, or chronic pain. The pamphlet shall,  
20 at a minimum, conform with the most current CDC Clinical  
21 Practice Guideline for Prescribing Opioids for Pain published  
22 by the Centers for Disease Control and Prevention and shall  
23 include:

- 24 (1) information on available nonopioid alternatives  
25 for the treatment of pain, including available nonopioid

1 medicinal drugs or drug products and nonpharmacological  
2 therapies; and

3 (2) the advantages and disadvantages of the use of  
4 nonopioid alternatives.

5 Section 15. Prescription of opioids.

6 (a) A health care practitioner shall exercise professional  
7 judgment in selecting appropriate treatment modalities for  
8 acute nonoperative, acute perioperative, subacute, or chronic  
9 pain in accordance with the most current CDC Clinical Practice  
10 Guideline for Prescribing Opioids for Pain published by the  
11 Centers for Disease Control and Prevention, including the use  
12 of nonopioid alternatives whenever reasonable, clinically  
13 appropriate, and evidence-based alternatives exist.

14 (b) The health care practitioner shall consider  
15 prescribing nonopioids as the first line of pain control in  
16 patients, unless the prescription is not clinically  
17 appropriate, in accordance with subsection (a).

18 (c) Except when a patient is receiving care in a hospital  
19 critical care unit or emergency department or a patient is  
20 receiving hospice services under Hospice Program Licensing  
21 Act, before providing care requiring the administration of  
22 anesthesia involving the use of an opioid drug, or prescribing  
23 or ordering an opioid drug for the treatment of pain, a health  
24 care practitioner who prescribes or orders an opioid drug must  
25 do all of the following:

1           (1) Inform the patient or the patient's representative  
2           of available nonopioid alternatives for the treatment of  
3           pain, which may include available nonopioid medicinal  
4           drugs or drug products, interventional procedures or  
5           treatments, acupuncture, chiropractic treatments, massage  
6           therapy, physical therapy, occupational therapy, or any  
7           other appropriate therapy as determined by the health care  
8           practitioner.

9           (2) Discuss with the patient or the patient's  
10          representative the advantages and disadvantages of the use  
11          of nonopioid alternatives and whether the patient is at a  
12          high risk of, or has a history of, controlled substance  
13          abuse or misuse and the patient's personal preferences.

14          (3) Provide the patient or the patient's  
15          representative, electronically or in printed form, with  
16          the educational pamphlet described in Section 10.

17          (4) Document in the patient's record that nonopioid  
18          alternatives were considered and discussed with the  
19          patient or the patient's representative and, to the extent  
20          that the health care practitioner prescribes or orders an  
21          opioid for the treatment of pain, document the reasons for  
22          such a prescription or order.

23          Section 20. Nonopioid directive form. The Department shall  
24          develop a nonopioid directive form indicating to health care  
25          practitioners and emergency medical services personnel that,

1     except as otherwise provided in Section 30 or in rules adopted  
2     by the Department, a patient who has executed the form or who  
3     has had a form executed on the patient's behalf must not be  
4     administered an opioid or offered a prescription for an  
5     opioid. The Department shall include on the nonopioid  
6     directive form instructions on how the form may be revoked and  
7     any other information that the Department considers relevant.  
8     The Department shall make the form available to the public on  
9     the Department's website.

10         Section 25. Nonopioid directive form; execution. A patient  
11     may execute a nonopioid directive form on his or her own  
12     behalf. A guardian or patient advocate of a patient may  
13     execute a nonopioid directive form on behalf of the patient.  
14     If a nonopioid directive form is executed by or on behalf of a  
15     patient and is presented to a health care practitioner, the  
16     health care practitioner shall obtain a copy of the form and  
17     include the copy in the patient's medical record. A patient  
18     may revoke a nonopioid directive form executed by himself or  
19     herself at any time and in any manner by which he or she is  
20     able to communicate his or her intent to revoke the form. A  
21     patient advocate or guardian may revoke a nonopioid directive  
22     form on behalf of a patient at any time by issuing the  
23     revocation in writing and providing notice of the revocation  
24     to the patient's health professional or his or her delegate.

1           Section 30. Administration of an opioid to a patient who  
2           has executed a nonopioid directive form. A prescriber who  
3           holds a controlled substances license or a health care  
4           practitioner who is a practical nurse or registered  
5           professional nurse and is acting on the order of the  
6           prescriber may administer an opioid to a patient who has  
7           executed a nonopioid directive form or who has had a nonopioid  
8           directive form executed on his or her behalf if the patient is  
9           being treated at a hospital or in a setting outside of a  
10          hospital in the case of an emergency and, in the prescriber's  
11          professional opinion, the administration of the opioid is  
12          medically necessary to treat the patient. If an opioid is  
13          administered under this Section, the prescriber shall ensure  
14          that the patient is provided with information on substance use  
15          disorder services.

16          Section 35. Limitation of liability. Except as otherwise  
17          provided by law, the following are not subject to civil or  
18          criminal liability or professional disciplinary action for  
19          failing to administer, prescribe, or dispense an opioid, or  
20          for the inadvertent administration of an opioid, to a patient  
21          who has executed a nonopioid directive form or who has had a  
22          nonopioid directive form executed on his or her behalf if the  
23          failure to act or the act was done reasonably and in good  
24          faith:

25                 (1) A health care practitioner whose scope of practice

1 includes the prescribing, administering, or dispensing of  
2 a controlled substance.

3 (2) A health facility or agency.

4 (3) An employee of a health care practitioner.

5 (4) An employee of a health facility or agency.

6 (5) Emergency medical services personnel.

7 Section 40. Rulemaking. The Department shall adopt rules  
8 to implement this Act. The rules must allow a health care  
9 practitioner or health facility or agency to incorporate a  
10 nonopioid directive form into an existing patient form or into  
11 other documentation used by the health care practitioner or  
12 health facility or agency, and the rules must include, but not  
13 be limited to, all of the following:

14 (1) Procedures to record a nonopioid directive form in  
15 a medical record, including an electronic medical record.

16 (2) Procedures to revoke a nonopioid directive form.

17 (3) Procedures to ensure that the recording,  
18 disclosure, or distribution of data relating to a  
19 nonopioid directive form or the transmission of a  
20 nonopioid directive form complies with State and federal  
21 confidentiality and consent laws, rules, and regulations.

22 (4) Exemptions for administering or prescribing an  
23 opioid to a patient who has executed a nonopioid directive  
24 form or who has had a nonopioid directive form executed on  
25 his or her behalf if the opioid is administered or



1 prescribed to treat the patient for a substance use  
2 disorder.

3 (5) Exemptions for administering or prescribing an  
4 opioid to a patient who has executed a nonopioid directive  
5 form or who has had a nonopioid directive form executed on  
6 his or her behalf if the patient is a hospice patient.

7 Section 100. The Illinois Insurance Code is amended by  
8 adding Section 370c.3 as follows:

9 (215 ILCS 5/370c.3 new)

10 Sec. 370c.3. Coverage for nonopioid medications; pain  
11 relief parity.

12 (a) In this Section, "health insurance issuer" has the  
13 meaning set forth in Section 5 of the Illinois Health  
14 Insurance Portability and Accountability Act.

15 (b) Notwithstanding any provision of law to the contrary,  
16 when a licensed health care practitioner prescribes a  
17 nonopioid medication for the treatment of acute pain, it shall  
18 be unlawful for a health insurance issuer to deny coverage of  
19 the nonopioid prescription drug in favor of an opioid  
20 prescription drug or to require the patient to try an opioid  
21 prescription drug prior to providing coverage of the nonopioid  
22 prescription drug.

23 (c) In establishing and maintaining its drug formulary, a  
24 health insurance issuer shall ensure that no nonopioid drug

1 approved by the United States Food and Drug Administration for  
2 the treatment or management of pain shall be disadvantaged or  
3 discouraged, with respect to coverage or cost sharing,  
4 relative to any opioid or narcotic drug for the treatment or  
5 management of pain on the health insurance issuer's drug  
6 formulary, where impermissible disadvantaging or  
7 discouragement includes, without limitation: imposing more  
8 restrictive coverage criteria on any such nonopioid drug than  
9 the least restrictive coverage criteria imposed on an opioid  
10 or narcotic drug; establishing more restrictive or more  
11 extensive utilization controls, including, but not limited to,  
12 more restrictive or more extensive prior authorization or step  
13 therapy requirements, for such nonopioid drug than the least  
14 restrictive or extensive utilization controls applicable to  
15 any such opioid or narcotic drug; or, if the health insurance  
16 issuer maintains a drug formulary grouped into tiers for the  
17 purposes of determining cost sharing, placing any such  
18 nonopioid drug on a tier that requires a cost-sharing  
19 responsibility that exceeds the lowest cost-sharing  
20 responsibility required for any opioid or narcotic drug on the  
21 drug formulary.

22 This subsection applies to a nonopioid drug immediately  
23 upon its approval by the United States Food and Drug  
24 Administration for the treatment or management of pain.

25 Section 105. The Illinois Public Aid Code is amended by

1 adding Section 5-55 as follows:

2 (305 ILCS 5/5-55 new)

3 Sec. 5-55. Coverage for nonopioid medications; pain relief  
4 parity.

5 (a) Required coverage for nonopioid medications.  
6 Notwithstanding any provision of law to the contrary, whenever  
7 a licensed health care practitioner prescribes a nonopioid  
8 medication for the treatment of acute pain, neither the  
9 Department nor a managed care organization contracted with the  
10 Department shall deny coverage of the nonopioid prescription  
11 drug in favor of an opioid prescription drug or require a  
12 patient to try an opioid prescription drug prior to providing  
13 coverage of the nonopioid prescription drug.

14 (b) Pain relief parity. In establishing and maintaining  
15 the Illinois Medicaid Preferred Drug List, the Department  
16 shall ensure that no nonopioid drug approved by the U.S. Food  
17 and Drug Administration for the treatment or management of  
18 pain shall be disadvantaged or discouraged with respect to  
19 coverage relative to any opioid or narcotic drug for the  
20 treatment or management of pain on the Illinois Medicaid  
21 Preferred Drug List, where impermissible disadvantaging or  
22 discouragement includes, without limitation: designating any  
23 such nonopioid drug as a nonpreferred drug if any opioid or  
24 narcotic drug is designated as a preferred drug; or  
25 establishing more restrictive or more extensive utilization

1 controls, including, but not limited to, more restrictive or  
2 more extensive prior authorization or step therapy  
3 requirements, for such nonopioid drug than the least  
4 restrictive or extensive utilization controls applicable to  
5 any such opioid or narcotic drug. This subsection applies to a  
6 nonopioid drug immediately upon its approval by the U.S. Food  
7 and Drug Administration for the treatment or management of  
8 pain, regardless of whether such drug has been reviewed by the  
9 Department for inclusion on the Illinois Medicaid Preferred  
10 Drug List. This subsection also applies to drugs provided  
11 under a contract between the Department and a managed care  
12 organization.