

ASSEMBLY BILL NO. 5595
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 5595 (First Reprint) with my recommendations for reconsideration.

Under this bill, an individual who is 18 years of age or older, an emancipated minor, or an individual's authorized representative, may execute a voluntary nonopioid directive stating that an opioid may not be administered or prescribed to the individual. A voluntary nonopioid directive is to be made on a form to be developed by the Department of Health ("DOH") and published on the department's website. The directive is to be entered into the patient's electronic file in a manner that permits the patient or the patient's authorized representative to access the directive. The bill is explicit that it does not prevent an opioid from being prescribed to a patient if deemed medically necessary. A patient or their representative may rescind the directive orally or in writing at any time.

The bill provides that a health care professional, a health care facility, or their employee will be immune from disciplinary action by the DOH or a licensing agency or board for any action taken to comply with the bill's provisions. Further, a health care professional, a health care facility, or an employee of a health care professional or health care facility will be immune from any civil or criminal liability for failure to administer, prescribe, or dispense an opioid, and for inadvertent administration of an opioid to an individual who has a voluntary nonopioid directive, so long as they act reasonably and in good faith.

I commend the sponsors for making voluntary nonopioid directives available to New Jersey residents. Although patients currently can communicate their wish not to be treated with opioids

to their healthcare providers at any time, this directive provides patients an additional avenue to proactively consider and communicate their wishes to their healthcare providers. This option will empower individuals in making their medical care decisions and will help reduce the frequency of opioid administrations.

While a voluntary non-opioid directive will inherently have some limitations given the current lack of a shared statewide electronic health system, and, thus, there may be situations where a provider will not be able to check for a nonopioid directive when a patient is incapacitated and a representative is not present, the benefits of providing this option to individuals weigh in favor of its implementation.

Nevertheless, and notwithstanding the value of these directives, medical experts caution against a directive preventing an opioid from being prescribed to an incapacitated patient who requires it for appropriate pain management intraoperatively. These experts, including the DOH, recommend an exemption in nonopioid directives for intraoperative care to promote safe care for surgical patients.

For these reasons, I recommend that the bill be amended to add an explicit exception for intraoperative procedures requiring general anesthesia. I also recommend that the DOH evaluate how the voluntary nonopioid directive could be made accessible to other practitioners and pharmacists that provide care and dispense medications to the individual when a patient is incapacitated while safeguarding patient privacy and in accordance with all State and federal health privacy laws. My recommendations also require that the nonopioid directive form include educational information on the circumstances where the directive would not be applicable. Finally, because developing and implementing these procedures, regulations, and educational materials will take some time, I

recommend that the bill take effect twelve months after its enactment.

Therefore, I herewith return Assembly Bill No. 5595 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Line 20: After "individual." insert "This directive shall not apply to intraoperative procedures requiring general anesthesia."

Page 2, Section 1, Line 23: After "website." insert "The form shall include information on circumstances in which the directive would not be applicable."

Page 2, Section 1, Line 34: After "directive." insert "The Department of Health may designate a secure common repository for nonopioid directives to be accessed by licensed healthcare professionals and pharmacists in accordance with all State and federal health privacy laws and in a manner determined by the department."

Page 3, Section 2, Line 6: After "2." insert "a."

Page 3, Section 2, Line 6: Delete "shall" and insert "may"

Page 3, Section 2, Line 10: Insert "b. The Division of Consumer Affairs may adopt rules and regulations in accordance with the "Administrative Procedure Act, "P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to effectuate the provisions of this act."

Page 3, Section 3, Line 11: Delete "immediately" and insert "on the first day of the 13th month after enactment"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate E. McDonnell

Chief Counsel to the Governor