

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1080

INTRODUCER: Senators Perry and Baxley

SUBJECT: Nonopioid Alternatives

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1080 amends the requirement that a health care practitioner advise a patient of nonopioid alternatives before providing care that uses opioid anesthesia or prescribing, ordering, dispensing, or administering an opioid drug.

More particularly, the bill amends this requirement by:

- Authorizing a health care practitioner to choose to advise the patient *or his or her representative*;
- Providing that a health care practitioner is not required to discuss nonopioid alternatives when treating a patient in a hospital critical care unit or an emergency department, or when treating a patient receiving hospice services; and
- No longer applying it to “dispensing” or “administering” of an opioid. For example, a nurse in a critical care unit does not need to advise a patient of nonopioid alternatives each time he or she gives the patient a dose of a prescribed opioid.

Both the bill and current law apply only to those opioid drugs that are listed as Schedule II controlled substances in s. 893.03, F.S., or 21 U.S.C. s. 812, including fentanyl, oxycodone, hydrocodone, codeine, and morphine.

II. Present Situation:

History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:¹

¹ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Jan. 23, 2020).

- “In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates”; and
- “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”

Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.²

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.³ “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”⁴

As reported by the Florida Attorney General’s Opioid Working Group,

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).⁵

Early in 2017, the Center for Disease Control (CDC) declared the opioid crisis an epidemic.⁶ Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.⁷

House Bill 21 (2018)

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. HB 21:

² Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, The New York Times (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html>.

³ See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁴ Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (March 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf).

⁵ *Id.*

⁶ See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>.

⁷ *Id.*

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the length of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

House Bill 451 (2019)

In 2019, the Florida Legislature passed HB 451 (ch. 2019-123, L.O.F.) that required each health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation: inform the patient of available nonopioid alternatives for the treatment of pain; discuss the advantages and disadvantages of the use of nonopioid alternatives; provide the patient with the pamphlet created by the Department of Health (DOH); and document any alternatives considered in the patient's record.

Opioid Abuse

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2016, 2017 saw:

- 6,178 (8 percent more) opioid-related deaths;
- 6,932 (4 percent more) individuals died with one or more prescription drugs in their system;⁸
- 3,684 (4 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 3 percent and deaths caused by heroin increased by 1 percent;
- Occurrences of fentanyl increased by 27 percent and deaths caused by fentanyl increased by 25 percent;
- Occurrences hydrocodone increased by 6 percent while deaths caused by hydrocodone decreased by 8 percent;
- Occurrences of buprenorphine and deaths caused by buprenorphine increased by 19 percent.⁹

The federal Centers for Disease Control and Prevention (CDC) estimates that the nationwide cost of opioid misuse at \$78.5 billion per year.¹⁰

However, in Florida, many of the trends above have begun to reverse. Compared with 2017, 2018 saw:

- 5,576 (10 percent less) opioid-related deaths;

⁸ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

⁹ FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2017 Annual Report* (Nov. 2018), available at <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx>.

¹⁰ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Jan. 23, 2020).

- 6,701 (3 percent less) individuals died with one or more prescription drugs in their system;¹¹
- 3,693 (9 more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin decreased by 11 percent and deaths caused by heroin decreased by 15 percent;
- Occurrences of fentanyl increased by 29.5 percent and deaths caused by fentanyl increased by 35 percent;
- Occurrences hydrocodone increased by 19 percent while deaths caused by hydrocodone decreased by 26 percent;
- Occurrences of oxycodone decreased by 8 percent and deaths caused by oxycodone decreased by 12 percent.¹²

III. Effect of Proposed Changes:

The bill amends the requirement that a health care practitioner advise a patient of nonopioid alternatives before providing opioid anesthesia or prescribing, ordering, dispensing, or administering an opioid drug.

The bill amends this requirement by:

- Authorizing a health care practitioner to choose to advise the patient *or his or her representative*;
- Providing that a health care practitioner is not required to discuss nonopioid alternatives when treating a patient in a hospital critical care unit or an emergency department, or when treating a patient receiving hospice services; and
- No longer applying it to “dispensing” or “administering” of an opioid. For example, a healthcare practitioner does not need to advise a patient of nonopioid alternatives each time he or she gives the patient a dose of a prescribed opioid.

Both the bill and current law apply only to those opioid drugs that are listed as Schedule II controlled substances in s. 893.03, F.S. or 21 U.S.C. s. 812, including fentanyl, oxycodone, hydrocodone, codeine, and morphine.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

¹² FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2018 Annual Report* (Nov. 2019) <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2018-Annual-Drug-Report.aspx> (last visited on Jan. 23, 2020).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.44 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
