

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

March 30, 2023
Date

Committee on Health & Human Services.

After consideration on the merits, the Committee recommends the following:

HB23-1077 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend reengrossed bill, page 3, line 8, strike "IS RECOGNIZED BY AND".
- 2 Page 3, line 9, strike "TEAM;" and substitute "TEAM, AND THE STUDENT'S
- 3 OR TRAINEE'S ROLE IN PERFORMING AN INTIMATE EXAMINATION FOR
- 4 EDUCATIONAL OR TRAINING PURPOSES HAS BEEN SHARED WITH THE
- 5 PATIENT;".
- 6 Page 3, line 13, strike "(I) A LICENSEE MAY PERFORM" and substitute
- 7 "THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION DO NOT
- 8 APPLY TO:
- 9 (I) A LICENSEE WHO PERFORMS".
- 10 Page 3, line 15, strike "ONLY".
- 11 Page 3, strike lines 17 through 19 and substitute "LIFE OR WELL-BEING OF
- 12 THE PATIENT, BUT THE LICENSEE MUST MAKE A RECORD OF".
- 13 Page 3, line 24, strike "UNCONSCIOUS." and substitute "UNCONSCIOUS;
- 14 OR".
- 15 Page 3, strike lines 25 through 27.
- 16 Page 4, strike lines 1 through 3 and substitute:
- 17 "(II) A LICENSEE WHO HAS OBTAINED THE PATIENT'S CONSENT TO
- 18 PROVIDE HEALTH CARE THAT INCLUDES AN INTIMATE EXAMINATION IF THE
- 19 LICENSEE HAS INFORMED THE PATIENT OF THE INTIMATE EXAMINATION IN
- 20 THE COURSE OF OBTAINING THE PATIENT'S CONSENT TO THE HEALTH

1 CARE."

2 Page 4, lines 8 and 9, strike "THE LICENSEE DETERMINES THE NEED FOR
3 THE EXAMINATION:" and substitute "POSSIBLE BEFORE THE INTIMATE
4 EXAMINATION OCCURS:".

5 Page 5, strike lines 9 and 10 and substitute "ELECTRONIC DOCUMENT;
6 AND".

7 Page 5, lines 19 and 20, strike "A REGULATOR FOR USE BY LICENSEES,"
8 and substitute "THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
9 IN ACCORDANCE WITH SECTION 25-3-130 (3), FOR USE BY HEALTH-CARE
10 PROVIDERS,".

11 Page 5, strike lines 22 through 27.

12 Reletter succeeding paragraph accordingly.

13 Page 6, line 5, after "COMPLAINT" insert "REGARDING A VIOLATION OF
14 THIS SECTION".

15 Page 6, strike lines 25 and 26 and substitute:

16 "(b) (I) "INTIMATE EXAMINATION" MEANS PALPATION OF A BREAST
17 OR AN INTERNAL PELVIC, PROSTATE, OR RECTAL EXAMINATION.

18 (II) "INTIMATE EXAMINATION" DOES NOT INCLUDE A VISUAL
19 EXAMINATION OF A PART OF THE BODY SPECIFIED IN SUBSECTION (6)(b)(I)
20 OF THIS SECTION THAT OCCURS INCIDENTAL TO THE CARE BEING
21 PROVIDED."

22 Page 9, strike lines 3 through 27.

23 Strike page 10.

24 Page 11, strike lines 1 through 5 and substitute:

25 **"25-3-130. Intimate examination of sedated or unconscious**
26 **patient - informed consent required - definitions.** (1) (a) (I) EXCEPT
27 AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, A HEALTH-CARE
28 FACILITY SHALL NOT PERMIT A LICENSED HEALTH-CARE PROVIDER, OR A
29 STUDENT OR TRAINEE UNDER THE SUPERVISION OF A LICENSED
30 HEALTH-CARE PROVIDER, TO PERFORM AN INTIMATE EXAMINATION OF A
31 SEDATED OR UNCONSCIOUS PATIENT AT THE HEALTH-CARE FACILITY

1 UNLESS THE PATIENT HAS PROVIDED SPECIFIC INFORMED CONSENT TO THE
2 EXAMINATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

3 (II) IN ADDITION TO THE REQUIREMENT TO OBTAIN A PATIENT'S
4 SPECIFIC INFORMED CONSENT, A HEALTH-CARE FACILITY MAY ALLOW A
5 STUDENT OR TRAINEE TO PERFORM AN INTIMATE EXAMINATION OF A
6 SEDATED OR UNCONSCIOUS PATIENT FOR EDUCATIONAL OR TRAINING
7 PURPOSES ONLY IF:

8 (A) THE EXAMINATION IS RELATED TO THE PLANNED PROCEDURE
9 TO BE PERFORMED ON THE PATIENT AT THE HEALTH-CARE FACILITY;

10 (B) THE STUDENT OR TRAINEE HAS BEEN INTRODUCED TO THE
11 PATIENT AS PART OF THE PATIENT'S CARE TEAM, AND THE STUDENT'S OR
12 TRAINEE'S ROLE IN PERFORMING AN INTIMATE EXAMINATION FOR
13 EDUCATIONAL OR TRAINING PURPOSES HAS BEEN SHARED WITH THE
14 PATIENT; AND

15 (C) THE STUDENT OR TRAINEE IS UNDER THE DIRECT SUPERVISION
16 OF THE LICENSED HEALTH-CARE PROVIDER RESPONSIBLE FOR SUPERVISING
17 THE STUDENT OR TRAINEE.

18 (b) THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION DO
19 NOT LIMIT THE ABILITY OF A HEALTH-CARE FACILITY TO ALLOW:

20 (I) A LICENSED HEALTH-CARE PROVIDER TO PERFORM AN INTIMATE
21 EXAMINATION OF A PATIENT WHO IS SEDATED OR UNCONSCIOUS WITHOUT
22 OBTAINING THE PATIENT'S SPECIFIC INFORMED CONSENT IN EMERGENCY
23 SITUATIONS WHEN THE INTIMATE EXAMINATION IS MEDICALLY NECESSARY
24 FOR THE LIFE OR WELL-BEING OF THE PATIENT, BUT THE LICENSED
25 HEALTH-CARE PROVIDER MUST MAKE A RECORD OF PERFORMING THE
26 EXAMINATION WITHOUT OBTAINING THE PATIENT'S SPECIFIC INFORMED
27 CONSENT, INCLUDING AN EXPLANATION OF THE REASON FOR NOT
28 OBTAINING THE PATIENT'S CONSENT, AND PROVIDE THE RECORD TO THE
29 PATIENT ONCE THE PATIENT IS NO LONGER UNDER SEDATION OR
30 UNCONSCIOUS; OR

31 (II) A LICENSED HEALTH-CARE PROVIDER WHO HAS OBTAINED THE
32 PATIENT'S CONSENT TO PROVIDE HEALTH CARE THAT INCLUDES AN
33 INTIMATE EXAMINATION TO PERFORM THE INTIMATE EXAMINATION IF THE
34 LICENSED HEALTH-CARE PROVIDER HAS INFORMED THE PATIENT OF THE
35 INTIMATE EXAMINATION IN THE COURSE OF OBTAINING THE PATIENT'S
36 CONSENT TO THE HEALTH CARE.

37 (2) TO OBTAIN SPECIFIC INFORMED CONSENT TO PERFORM AN
38 INTIMATE EXAMINATION ON A SEDATED OR UNCONSCIOUS PATIENT, A
39 HEALTH-CARE FACILITY SHALL, DURING A PRE-OPERATIVE APPOINTMENT
40 BEFORE THE PROCEDURE AT WHICH THE EXAMINATION WILL BE
41 PERFORMED OR, IN THE ABSENCE OF A PRE-OPERATIVE APPOINTMENT, AS
42 SOON AS POSSIBLE BEFORE THE INTIMATE EXAMINATION OCCURS:

43 (a) PROVIDE A WRITTEN OR ELECTRONIC DOCUMENT TO THE

1 PATIENT, SEPARATE FROM ANY OTHER NOTICE OR AGREEMENT, THAT:
2 (I) INCLUDES THE FOLLOWING HEADING AT THE TOP OF THE
3 DOCUMENT, IN NO SMALLER THAN EIGHTEEN-POINT, BOLD-FACED TYPE:
4 "CONSENT FOR EXAMINATION OF BREASTS, PELVIC REGION,
5 RECTUM, AND/OR PROSTATE";
6 (II) SPECIFIES THE NATURE AND PURPOSE OF THE INTIMATE
7 EXAMINATION;
8 (III) NAMES ONE OR MORE LICENSED HEALTH-CARE PROVIDERS
9 WHOM THE PATIENT MAY AUTHORIZE TO PERFORM THE INTIMATE
10 EXAMINATION;
11 (IV) STATES WHETHER THERE MAY BE ONE OR MORE STUDENTS OR
12 TRAINEES WHOM THE PATIENT MAY AUTHORIZE TO PERFORM AN INTIMATE
13 EXAMINATION FOR EDUCATIONAL OR TRAINING PURPOSES OR TO OBSERVE
14 OR OTHERWISE BE PRESENT AT THE EXAMINATION, EITHER IN PERSON OR
15 THROUGH ELECTRONIC MEANS, AND IDENTIFIES THE STUDENTS OR
16 TRAINEES BY NAME; AND
17 (V) PROVIDES THE PATIENT THE ABILITY TO CONSENT TO OR
18 DECLINE THE FOLLOWING:
19 (A) AN INTIMATE EXAMINATION FOR DIAGNOSIS OR TREATMENT,
20 TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;
21 (B) AN INTIMATE EXAMINATION FOR EDUCATIONAL OR TRAINING
22 PURPOSES, TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;
23 AND
24 (C) ONE OR MORE, BUT NO MORE THAN THREE, ADDITIONAL
25 INTIMATE EXAMINATIONS FOR EDUCATIONAL OR TRAINING PURPOSES, TO
26 BE PERFORMED BY UP TO THREE DIFFERENT STUDENTS OR TRAINEES;
27 (b) OBTAIN THE SIGNATURE OF THE PATIENT ON THE WRITTEN OR
28 ELECTRONIC DOCUMENT; AND
29 (c) SIGN THE WRITTEN OR ELECTRONIC DOCUMENT.
30 (3)(a) FOR PURPOSES OF COMPLYING WITH SUBSECTION (2) OF THIS
31 SECTION, A HEALTH-CARE FACILITY MAY:
32 (I) DEVELOP AND USE ITS OWN WRITTEN OR ELECTRONIC
33 DOCUMENT, SO LONG AS THE DOCUMENT SATISFIES THE REQUIREMENTS OF
34 SUBSECTION (2) OF THIS SECTION; OR
35 (II) USE A WRITTEN OR ELECTRONIC DOCUMENT DEVELOPED BY
36 THE DEPARTMENT FOR USE BY HEALTH-CARE FACILITIES AND LICENSED
37 HEALTH-CARE PROVIDERS, SO LONG AS THE DOCUMENT SATISFIES THE
38 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.
39 (b) IF THE DEPARTMENT DEVELOPS A WRITTEN OR ELECTRONIC
40 DOCUMENT FOR USE BY HEALTH-CARE FACILITIES, THE DEPARTMENT
41 SHALL DEVELOP A SINGLE, CONSISTENT DOCUMENT FOR USE BY ALL
42 HEALTH-CARE FACILITIES AND ALL LICENSED HEALTH-CARE PROVIDERS,
43 REGARDLESS OF PRACTICE AREA, THAT COMPLIES WITH THE

- 1 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.
2 (c) THE HEALTH-CARE FACILITY SHALL MAKE THE COMPLETED,
3 SIGNED SPECIFIC INFORMED CONSENT DOCUMENT AVAILABLE TO THE
4 PATIENT."
- 5 Renumber succeeding subsections accordingly.
- 6 Page 11, line 8, after "COMPLAINT" insert "REGARDING A VIOLATION OF
7 THIS SECTION".
- 8 Page 12, strike lines 2 and 3 and substitute:
- 9 (b) (I) "INTIMATE EXAMINATION" MEANS PALPATION OF A BREAST
10 OR AN INTERNAL PELVIC, PROSTATE, OR RECTAL EXAMINATION.
11 (II) "INTIMATE EXAMINATION" DOES NOT INCLUDE A VISUAL
12 EXAMINATION OF A PART OF THE BODY SPECIFIED IN SUBSECTION (6)(b)(I)
13 OF THIS SECTION THAT OCCURS INCIDENTAL TO THE CARE BEING
14 PROVIDED."
- 15 Page 13, line 6, strike "(5)(c)(I) AND (5)(c)(II)" and substitute "(6)(c)(I)
16 AND (6)(c)(II)".
- 17 Page 13, line 9, strike "(5)(c)(III)" and substitute "(6)(c)(III)".
- 18 Page 13, line 12, strike "(5)(c)(IV)" and substitute "(6)(c)(IV)".

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