

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0191.01 Christy Chase x2008

HOUSE BILL 23-1077

HOUSE SPONSORSHIP

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House Committees

Health & Insurance
Appropriations

Senate Committees

Health & Human Services
Appropriations

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT TO OBTAIN A PATIENT'S INFORMED**
102 **CONSENT BEFORE PERFORMING AN INTIMATE EXAMINATION OF**
103 **THE PATIENT UNDER SPECIFIED CIRCUMSTANCES, AND, IN**
104 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits a licensed physician; licensed medical resident, intern, or fellow; licensed professional nurse; advanced practice registered nurse; registered direct-entry midwife; or medical, nursing, or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

SENATE
Amended 2nd Reading
April 19, 2023

HOUSE
3rd Reading Unamended
March 13, 2023

HOUSE
Amended 2nd Reading
March 11, 2023

direct-entry midwife student or trainee (licensee, student, or trainee) from performing, and prohibits a licensed health-care facility from permitting a licensee, student, or trainee to perform, an intimate examination on a sedated or unconscious patient unless the patient has given specific informed consent to an intimate examination. Additionally, a student or trainee may perform an intimate examination on a sedated or unconscious patient for educational or training purposes only if:

- The examination is related to the planned procedure to be performed on the patient;
- The patient recognizes the student or trainee as part of the patient's care team; and
- The student or trainee is under the direct supervision of the supervising licensee.

The bill outlines the requirements for obtaining the patient's informed consent. Failure to comply with the requirements of the bill, or retaliating against a person who complains about a violation of the bill, constitutes unprofessional conduct, is grounds for discipline, and subjects the licensee, student, or trainee to discipline by the regulator that regulates the particular health-care profession. A licensed health-care facility that fails to comply with the requirements of the bill is subject to sanctions imposed by the department of public health and environment.

Additionally, liability limitations otherwise applicable to health-care professionals and institutions under current law do not apply to a licensee that performs, or a licensed health-care facility that permits a licensee to perform, an intimate examination on a sedated or unconscious patient in violation of the requirements of the bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 12-30-120 as
3 follows:

4 **12-30-120. Intimate examination of sedated or unconscious**
5 **patient - informed consent required - definitions.** (1) (a) (I) EXCEPT
6 AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, NEITHER A LICENSEE,
7 NOR A STUDENT OR TRAINEE UNDER THE SUPERVISION OF A LICENSEE,
8 SHALL PERFORM AN INTIMATE EXAMINATION OF A SEDATED OR
9 UNCONSCIOUS PATIENT UNLESS THE PATIENT HAS PROVIDED SPECIFIC
10 INFORMED CONSENT TO THE EXAMINATION IN ACCORDANCE WITH

1 SUBSECTION (2) OF THIS SECTION.

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

6 (A) THE EXAMINATION IS RELATED TO THE PLANNED PROCEDURE
7 TO BE PERFORMED ON THE PATIENT;

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

13 (C) THE STUDENT OR TRAINEE IS UNDER THE DIRECT SUPERVISION
14 OF THE LICENSEE RESPONSIBLE FOR SUPERVISING THE STUDENT OR
15 TRAINEE.

16 (b) THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION DO
17 NOT APPLY TO:

18 (I) A LICENSEE WHO PERFORMS AN INTIMATE EXAMINATION OF A
19 PATIENT WHO IS SEDATED OR UNCONSCIOUS WITHOUT OBTAINING THE
20 PATIENT'S **SPECIFIC** INFORMED CONSENT IN EMERGENCY SITUATIONS
21 WHEN THE INTIMATE EXAMINATION IS MEDICALLY NECESSARY FOR THE
22 LIFE OR WELL-BEING OF THE PATIENT, BUT THE LICENSEE MUST MAKE A
23 RECORD OF PERFORMING THE EXAMINATION WITHOUT OBTAINING THE
24 PATIENT'S SPECIFIC INFORMED CONSENT, INCLUDING AN EXPLANATION OF
25 THE REASON FOR NOT OBTAINING THE PATIENT'S CONSENT, AND THE
26 RECORD MUST BE PROVIDED TO THE PATIENT PRIOR TO DISCHARGE; OR

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1 (II) A LICENSEE WHO HAS OBTAINED THE PATIENT'S CONSENT TO
2 PROVIDE HEALTH CARE THAT INCLUDES AN INTIMATE EXAMINATION IF THE
3 LICENSEE HAS INFORMED THE PATIENT OF THE INTIMATE EXAMINATION IN
4 THE COURSE OF OBTAINING THE PATIENT'S CONSENT TO THE HEALTH CARE.

5 (2) TO OBTAIN SPECIFIC INFORMED CONSENT TO PERFORM AN
6 INTIMATE EXAMINATION ON A SEDATED OR UNCONSCIOUS PATIENT, A
7 LICENSEE SHALL, DURING A PRE-OPERATIVE APPOINTMENT BEFORE THE
8 PROCEDURE AT WHICH THE EXAMINATION WILL BE PERFORMED OR, IN THE
9 ABSENCE OF A PRE-OPERATIVE APPOINTMENT, AS SOON AS POSSIBLE
10 BEFORE THE INTIMATE EXAMINATION OCCURS:

11 (a) PROVIDE A WRITTEN OR ELECTRONIC DOCUMENT TO THE
12 PATIENT, SEPARATE FROM ANY OTHER NOTICE OR AGREEMENT, THAT:

13 (I) INCLUDES THE FOLLOWING HEADING AT THE TOP OF THE
14 DOCUMENT, IN NO SMALLER THAN EIGHTEEN-POINT, BOLD-FACED TYPE:
15 "CONSENT FOR EXAMINATION OF BREASTS, PELVIC REGION,
16 RECTUM, AND/OR PROSTATE";

17 (II) SPECIFIES THE NATURE AND PURPOSE OF THE INTIMATE
18 EXAMINATION;

19 (III) NAMES ONE OR MORE LICENSEES WHOM THE PATIENT MAY
20 AUTHORIZE TO PERFORM THE INTIMATE EXAMINATION;

21 (IV) STATES WHETHER THERE MAY BE ONE OR MORE STUDENTS OR
22 TRAINEES WHOM THE PATIENT MAY AUTHORIZE TO PERFORM AN INTIMATE
23 EXAMINATION FOR EDUCATIONAL OR TRAINING PURPOSES OR TO OBSERVE
24 OR OTHERWISE BE PRESENT AT THE EXAMINATION, EITHER IN PERSON OR
25 THROUGH ELECTRONIC MEANS, AND IDENTIFIES THE STUDENTS OR
26 TRAINEES BY NAME; AND

27 (V) PROVIDES THE PATIENT THE ABILITY TO CONSENT TO OR

1 DECLINE THE FOLLOWING:

2 (A) AN INTIMATE EXAMINATION FOR DIAGNOSIS OR TREATMENT,
3 TO BE PERFORMED BY A LICENSEE;

4 (B) AN INTIMATE EXAMINATION FOR EDUCATIONAL OR TRAINING
5 PURPOSES, TO BE PERFORMED BY A LICENSEE; AND

6 (C) ONE OR MORE, BUT NO MORE THAN THREE, ADDITIONAL
7 INTIMATE EXAMINATIONS FOR EDUCATIONAL OR TRAINING PURPOSES, TO
8 BE PERFORMED BY UP TO THREE DIFFERENT STUDENTS OR TRAINEES;

9 (b) OBTAIN THE SIGNATURE OF THE PATIENT ON THE WRITTEN OR
10 ELECTRONIC DOCUMENT; AND

11 (c) SIGN THE WRITTEN OR ELECTRONIC DOCUMENT.

12 (3)(a) FOR PURPOSES OF COMPLYING WITH SUBSECTION (2) OF THIS
13 SECTION, A LICENSEE MAY:

14 (I) DEVELOP AND USE ITS OWN WRITTEN OR ELECTRONIC
15 DOCUMENT, SO LONG AS THE DOCUMENT SATISFIES THE REQUIREMENTS OF
16 SUBSECTION (2) OF THIS SECTION; OR

17 (II) USE A WRITTEN OR ELECTRONIC DOCUMENT DEVELOPED BY
18 THE LICENSED HEALTH-CARE FACILITY WHERE THE LICENSEE WILL BE
19 PERFORMING THE INTIMATE EXAMINATION OR DEVELOPED BY THE
20 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, IN ACCORDANCE
21 WITH SECTION 25-3-130 (3), FOR USE BY HEALTH-CARE PROVIDERS, SO
22 LONG AS THE DOCUMENT SATISFIES THE REQUIREMENTS OF SUBSECTION
23 (2) OF THIS SECTION.

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25 (b) THE LICENSEE SHALL MAKE THE COMPLETED, SIGNED SPECIFIC
26 INFORMED CONSENT DOCUMENT AVAILABLE TO THE PATIENT.

27 (4) (a) A LICENSEE, STUDENT, OR TRAINEE WHO VIOLATES THIS

1 SECTION, OR WHO RETALIATES AGAINST AN INDIVIDUAL, INCLUDING A
2 WHISTLEBLOWER, FOR FILING A COMPLAINT REGARDING A VIOLATION OF
3 THIS SECTION WITH THE REGULATOR OF THE LICENSEE, STUDENT, OR
4 TRAINEE OR WITH THE DEPARTMENT OF PUBLIC HEALTH AND
5 ENVIRONMENT OR FOR OTHERWISE COMPLAINING TO THE LICENSED
6 HEALTH-CARE FACILITY WHERE THE PATIENT RECEIVED AN INTIMATE
7 EXAMINATION OR TO ANY OTHER PERSON, ENGAGES IN UNPROFESSIONAL
8 CONDUCT, COMMITS AN ACT THAT IS GROUNDS FOR DISCIPLINE, AND IS
9 SUBJECT TO DISCIPLINE PURSUANT TO SECTION 12-225-109, 12-240-121,
10 OR 12-255-120, AS APPLICABLE.

11 (b) A PATIENT WHO HAS BEEN SUBJECTED TO AN INTIMATE
12 EXAMINATION IN VIOLATION OF THIS SECTION MAY FILE A CIVIL ACTION
13 FOR DAMAGES IN A COURT OF COMPETENT JURISDICTION. SUCH ACTION IS
14 NOT A MEDICAL MALPRACTICE ACTION, AND THE LIMITATION ON DAMAGES
15 FOR NONECONOMIC LOSS OR INJURY ESTABLISHED PURSUANT TO SECTION
16 13-21-102.5 APPLIES TO ANY AWARD TO THE PATIENT FOR NONECONOMIC
17 DAMAGES.

18 (5) NOTHING IN THIS SECTION AFFECTS THE ABILITY TO PERFORM
19 A MEDICAL FORENSIC EXAMINATION, INCLUDING THE COLLECTION OF
20 EVIDENCE, IN CONNECTION WITH AN ALLEGED SEXUAL ASSAULT OR OTHER
21 CRIME OR THE INVESTIGATION OF AN ALLEGED SEXUAL ASSAULT OR OTHER
22 CRIME, PURSUANT TO APPLICABLE LAWS.

23 (6) AS USED IN THIS SECTION:

24 (a) "HEALTH-CARE PROVIDER" MEANS A LICENSEE OR A LICENSED
25 HEALTH-CARE FACILITY WHERE A PATIENT IS RECEIVING CARE.

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

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

4 (c) "LICENSED HEALTH-CARE FACILITY" MEANS A HEALTH-CARE
5 FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH
6 AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a) AND
7 INCLUDES AN INDIVIDUAL AUTHORIZED TO ACT ON BEHALF OF THE
8 HEALTH-CARE FACILITY.

9 (d) "LICENSEE" MEANS:

10 (I) A PHYSICIAN OR PHYSICIAN ASSISTANT LICENSED PURSUANT TO
11 ARTICLE 240 OF THIS TITLE 12;

12 (II) A PERSON WHO HOLDS A PHYSICIAN TRAINING LICENSE ISSUED
13 PURSUANT TO SECTION 12-240-128 AND IS:

14 (A) A RESIDENT ENROLLED IN AN APPROVED RESIDENCY, AS
15 DEFINED IN SECTION 12-240-104 (4);

16 (B) AN INTERN ENROLLED IN AN APPROVED INTERNSHIP, AS
17 DEFINED IN SECTION 12-240-104 (2); OR

18 (C) A FELLOW ENROLLED IN AN APPROVED FELLOWSHIP, AS
19 DEFINED IN SECTION 12-240-104 (1);

20 (III) AN ADVANCED PRACTICE REGISTERED NURSE, AS DEFINED IN
21 SECTION 12-255-104 (1); A REGISTERED NURSE, AS DEFINED IN SECTION
22 12-255-104 (11); OR A MIDWIFE, OTHER THAN A DIRECT-ENTRY MIDWIFE
23 OR CERTIFIED NURSE MIDWIFE, PRACTICING IN THIS STATE WHOSE SCOPE
24 OF PRACTICE INCLUDES PERFORMING INTIMATE EXAMINATIONS; OR

25 (IV) A DIRECT-ENTRY MIDWIFE REGISTERED PURSUANT TO
26 ARTICLE 225 OF THIS TITLE 12.

27 (e) "PATIENT" MEANS AN INDIVIDUAL UNDER THE CARE OF A

1 HEALTH-CARE PROVIDER OR THE PATIENT'S AUTHORIZED REPRESENTATIVE.

2 (f) "PATIENT'S AUTHORIZED REPRESENTATIVE" MEANS AN
3 INDIVIDUAL WHO IS AUTHORIZED TO MAKE HEALTH-CARE DECISIONS FOR
4 OR EXERCISE RIGHTS ON BEHALF OF THE PATIENT, INCLUDING, FOR A
5 PATIENT WHO IS UNDER EIGHTEEN YEARS OF AGE, THE PARENT OR LEGAL
6 GUARDIAN OF, OR THE INDIVIDUAL STANDING IN LOCO PARENTIS TO, THE
7 PATIENT.

8 (g) "REGULATOR" MEANS:

9 (I) FOR LICENSEES DESCRIBED IN SUBSECTIONS (6)(d)(I) AND
10 (6)(d)(II) OF THIS SECTION, THE COLORADO MEDICAL BOARD CREATED IN
11 SECTION 12-240-105;

12 (II) FOR LICENSEES DESCRIBED IN SUBSECTION (6)(d)(III) OF THIS
13 SECTION, THE STATE BOARD OF NURSING CREATED IN SECTION 12-255-105;
14 AND

15 (III) FOR LICENSEES DESCRIBED IN SUBSECTION (6)(d)(IV) OF THIS
16 SECTION, THE DIRECTOR;

17 (h) "STUDENT" MEANS AN INDIVIDUAL CURRENTLY ENROLLED IN:

18 (I) AN APPROVED MEDICAL COLLEGE, AS DEFINED IN SECTION
19 12-240-104 (3);

20 (II) AN APPROVED EDUCATION PROGRAM, AS DEFINED IN SECTION
21 12-255-104 (2), FOR PROFESSIONAL NURSING; OR

22 (III) A TRAINING PROGRAM APPROVED BY THE DIRECTOR, AS
23 DESCRIBED IN SECTION 12-225-104 (4)(c).

24 (i) "TRAINEE" MEANS AN INDIVIDUAL ENROLLED IN OR OTHERWISE
25 PARTICIPATING IN TRAINING, PRACTICAL EXPERIENCE, PRACTICUM, OR ANY
26 OTHER EXPERIENTIAL OR CLINICAL PROGRAM THAT IS REQUIRED PURSUANT
27 TO ARTICLE 225, 240, OR 255 OF THIS TITLE 12 FOR THE INDIVIDUAL TO

1 BECOME A LICENSEE.

2 (j) "WHISTLEBLOWER" MEANS AN INDIVIDUAL WHO HAS
3 KNOWLEDGE OF AN ALLEGED VIOLATION OF THIS SECTION.

4 **SECTION 2.** In Colorado Revised Statutes, **add** 25-3-130 as
5 follows:

6 

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8 **25-3-130. Intimate examination of sedated or unconscious**
9 **patient - informed consent required - definitions.** (1) (a) (I) EXCEPT
10 AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, A HEALTH-CARE
11 FACILITY SHALL NOT PERMIT A LICENSED HEALTH-CARE PROVIDER, OR A
12 STUDENT OR TRAINEE UNDER THE SUPERVISION OF A LICENSED
13 HEALTH-CARE PROVIDER, TO PERFORM AN INTIMATE EXAMINATION OF A
14 SEDATED OR UNCONSCIOUS PATIENT AT THE HEALTH-CARE FACILITY
15 UNLESS THE PATIENT HAS PROVIDED SPECIFIC INFORMED CONSENT TO THE
16 EXAMINATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

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

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

24 (B) THE STUDENT OR TRAINEE HAS BEEN INTRODUCED TO THE
25 PATIENT AS PART OF THE PATIENT'S CARE TEAM, AND THE STUDENT'S OR
26 TRAINEE'S ROLE IN PERFORMING AN INTIMATE EXAMINATION FOR
27 EDUCATIONAL OR TRAINING PURPOSES HAS BEEN SHARED WITH THE

1 PATIENT; AND

2 (C) THE STUDENT OR TRAINEE IS UNDER THE DIRECT SUPERVISION
3 OF THE LICENSED HEALTH-CARE PROVIDER RESPONSIBLE FOR SUPERVISING
4 THE STUDENT OR TRAINEE.

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

7 (I) A LICENSED HEALTH-CARE PROVIDER TO PERFORM AN INTIMATE
8 EXAMINATION OF A PATIENT WHO IS SEDATED OR UNCONSCIOUS WITHOUT
9 OBTAINING THE PATIENT'S SPECIFIC INFORMED CONSENT IN EMERGENCY
10 SITUATIONS WHEN THE INTIMATE EXAMINATION IS MEDICALLY NECESSARY
11 FOR THE LIFE OR WELL-BEING OF THE PATIENT, BUT THE LICENSED
12 HEALTH-CARE PROVIDER MUST MAKE A RECORD OF PERFORMING THE
13 EXAMINATION WITHOUT OBTAINING THE PATIENT'S SPECIFIC INFORMED
14 CONSENT, INCLUDING AN EXPLANATION OF THE REASON FOR NOT
15 OBTAINING THE PATIENT'S CONSENT, AND THE RECORD MUST BE PROVIDED
16 TO THE PATIENT PRIOR TO DISCHARGE; OR

17 (II) A LICENSED HEALTH-CARE PROVIDER WHO HAS OBTAINED THE
18 PATIENT'S CONSENT TO PROVIDE HEALTH CARE THAT INCLUDES AN
19 INTIMATE EXAMINATION TO PERFORM THE INTIMATE EXAMINATION IF THE
20 LICENSED HEALTH-CARE PROVIDER HAS INFORMED THE PATIENT OF THE
21 INTIMATE EXAMINATION IN THE COURSE OF OBTAINING THE PATIENT'S
22 CONSENT TO THE HEALTH CARE.

23 (2) TO OBTAIN SPECIFIC INFORMED CONSENT TO PERFORM AN
24 INTIMATE EXAMINATION ON A SEDATED OR UNCONSCIOUS PATIENT, A
25 HEALTH-CARE FACILITY SHALL, DURING A PRE-OPERATIVE APPOINTMENT
26 BEFORE THE PROCEDURE AT WHICH THE EXAMINATION WILL BE
27 PERFORMED OR, IN THE ABSENCE OF A PRE-OPERATIVE APPOINTMENT, AS

1 SOON AS POSSIBLE BEFORE THE INTIMATE EXAMINATION OCCURS:

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

3 PATIENT, SEPARATE FROM ANY OTHER NOTICE OR AGREEMENT, THAT:

4 (I) INCLUDES THE FOLLOWING HEADING AT THE TOP OF THE

5 DOCUMENT, IN NO SMALLER THAN EIGHTEEN-POINT, BOLD-FACED TYPE:

6 "CONSENT FOR EXAMINATION OF BREASTS, PELVIC REGION,

7 RECTUM, AND/OR PROSTATE";

8 (II) SPECIFIES THE NATURE AND PURPOSE OF THE INTIMATE

9 EXAMINATION;

10 (III) NAMES ONE OR MORE LICENSED HEALTH-CARE PROVIDERS

11 WHOM THE PATIENT MAY AUTHORIZE TO PERFORM THE INTIMATE

12 EXAMINATION;

13 (IV) STATES WHETHER THERE MAY BE ONE OR MORE STUDENTS OR

14 TRAINEES WHOM THE PATIENT MAY AUTHORIZE TO PERFORM AN INTIMATE

15 EXAMINATION FOR EDUCATIONAL OR TRAINING PURPOSES OR TO OBSERVE

16 OR OTHERWISE BE PRESENT AT THE EXAMINATION, EITHER IN PERSON OR

17 THROUGH ELECTRONIC MEANS, AND IDENTIFIES THE STUDENTS OR

18 TRAINEES BY NAME; AND

19 (V) PROVIDES THE PATIENT THE ABILITY TO CONSENT TO OR

20 DECLINE THE FOLLOWING:

21 (A) AN INTIMATE EXAMINATION FOR DIAGNOSIS OR TREATMENT,

22 TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;

23 (B) AN INTIMATE EXAMINATION FOR EDUCATIONAL OR TRAINING

24 PURPOSES, TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;

25 AND

26 (C) ONE OR MORE, BUT NO MORE THAN THREE, ADDITIONAL

27 INTIMATE EXAMINATIONS FOR EDUCATIONAL OR TRAINING PURPOSES, TO

1 BE PERFORMED BY UP TO THREE DIFFERENT STUDENTS OR TRAINEES;

2 (b) OBTAIN THE SIGNATURE OF THE PATIENT ON THE WRITTEN OR
3 ELECTRONIC DOCUMENT; AND

4 (c) SIGN THE WRITTEN OR ELECTRONIC DOCUMENT.

5 (3)(a) FOR PURPOSES OF COMPLYING WITH SUBSECTION (2) OF THIS
6 SECTION, A HEALTH-CARE FACILITY MAY:

7 (I) DEVELOP AND USE ITS OWN WRITTEN OR ELECTRONIC
8 DOCUMENT, SO LONG AS THE DOCUMENT SATISFIES THE REQUIREMENTS OF
9 SUBSECTION (2) OF THIS SECTION; OR

10 (II) USE A WRITTEN OR ELECTRONIC DOCUMENT DEVELOPED BY
11 THE DEPARTMENT FOR USE BY HEALTH-CARE FACILITIES AND LICENSED
12 HEALTH-CARE PROVIDERS, SO LONG AS THE DOCUMENT SATISFIES THE
13 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.

14 (b) IF THE DEPARTMENT DEVELOPS A WRITTEN OR ELECTRONIC
15 DOCUMENT FOR USE BY HEALTH-CARE FACILITIES, THE DEPARTMENT
16 SHALL DEVELOP A SINGLE, CONSISTENT DOCUMENT FOR USE BY ALL
17 HEALTH-CARE FACILITIES AND ALL LICENSED HEALTH-CARE PROVIDERS,
18 REGARDLESS OF PRACTICE AREA, THAT COMPLIES WITH THE
19 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.

20 (c) THE HEALTH-CARE FACILITY SHALL MAKE THE COMPLETED,
21 SIGNED SPECIFIC INFORMED CONSENT DOCUMENT AVAILABLE TO THE
22 PATIENT.

23 (4)(a) (I) IF A HEALTH-CARE FACILITY VIOLATES THIS SECTION, OR
24 RETALIATES AGAINST AN INDIVIDUAL, INCLUDING A WHISTLEBLOWER, FOR
25 FILING A COMPLAINT REGARDING A VIOLATION OF THIS SECTION WITH THE
26 DEPARTMENT OR A REGULATOR OR FOR OTHERWISE COMPLAINING TO ANY
27 OTHER PERSON, THE AGGRIEVED INDIVIDUAL MAY FILE A COMPLAINT WITH

1 THE DEPARTMENT. THE DEPARTMENT MAY RECEIVE AND INVESTIGATE
2 COMPLAINTS FILED PURSUANT TO THIS SUBSECTION (4)(a) AGAINST A
3 HEALTH-CARE FACILITY AND, AS APPROPRIATE, MAY REFER MATTERS
4 RELATED TO A LICENSED HEALTH-CARE PROVIDER OR A STUDENT OR
5 TRAINEE UNDER THE SUPERVISION OF A LICENSED HEALTH-CARE PROVIDER
6 TO THE APPROPRIATE REGULATOR.

7 (II) IF THE DEPARTMENT DETERMINES, AFTER A HEARING ON THE
8 MATTER IN ACCORDANCE WITH THE REQUIREMENTS AND PROCEDURES
9 SPECIFIED IN ARTICLE 4 OF TITLE 24, THAT A HEALTH-CARE FACILITY HAS
10 VIOLATED THIS SECTION OR HAS RETALIATED AGAINST AN INDIVIDUAL,
11 INCLUDING A WHISTLEBLOWER, FOR FILING A COMPLAINT WITH THE
12 DEPARTMENT OR A REGULATOR REGARDING A VIOLATION OF THIS SECTION
13 OR FOR OTHERWISE COMPLAINING TO ANY OTHER PERSON, THE
14 DEPARTMENT MAY TAKE ACTION AUTHORIZED IN THIS ARTICLE 3 AGAINST
15 THE HEALTH-CARE FACILITY'S LICENSE OR IMPOSE RESTRICTIONS OR
16 CONDITIONS ON THE HEALTH-CARE FACILITY AS THE DEPARTMENT
17 DETERMINES APPROPRIATE.

18 (III) THE STATE BOARD OF HEALTH MAY ADOPT RULES AS
19 NECESSARY TO ENFORCE THIS SECTION. ___

20 (b) A PATIENT WHO HAS BEEN SUBJECTED TO AN INTIMATE
21 EXAMINATION IN VIOLATION OF THIS SECTION MAY FILE A CIVIL ACTION
22 FOR DAMAGES IN A COURT OF COMPETENT JURISDICTION. SUCH ACTION IS
23 NOT A MEDICAL MALPRACTICE ACTION, AND THE LIMITATION ON DAMAGES
24 FOR NONECONOMIC LOSS OR INJURY ESTABLISHED PURSUANT TO SECTION
25 13-21-102.5 APPLIES TO ANY AWARD TO THE PATIENT FOR NONECONOMIC
26 DAMAGES.

27 (5) NOTHING IN THIS SECTION AFFECTS THE ABILITY TO PERFORM

1 A MEDICAL FORENSIC EXAMINATION, INCLUDING THE COLLECTION OF
2 EVIDENCE, IN CONNECTION WITH AN ALLEGED SEXUAL ASSAULT OR OTHER
3 CRIME OR THE INVESTIGATION OF AN ALLEGED SEXUAL ASSAULT OR OTHER
4 CRIME, PURSUANT TO APPLICABLE LAWS.

5 (6) AS USED IN THIS SECTION:

6 (a) "HEALTH-CARE FACILITY" MEANS A HEALTH-CARE FACILITY
7 LICENSED OR CERTIFIED BY THE DEPARTMENT PURSUANT TO SECTION
8 25-1.5-103 (1)(a) AND INCLUDES AN INDIVIDUAL AUTHORIZED TO ACT ON
9 BEHALF OF THE HEALTH-CARE FACILITY.

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

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

15 (c) "LICENSED HEALTH-CARE PROVIDER" MEANS:

16 (I) A PHYSICIAN OR PHYSICIAN ASSISTANT LICENSED PURSUANT TO
17 ARTICLE 240 OF TITLE 12;

18 (II) A PERSON WHO HOLDS A PHYSICIAN TRAINING LICENSE ISSUED
19 PURSUANT TO SECTION 12-240-128 AND IS:

20 (A) A RESIDENT ENROLLED IN AN APPROVED RESIDENCY, AS
21 DEFINED IN SECTION 12-240-104 (4);

22 (B) AN INTERN ENROLLED IN AN APPROVED INTERNSHIP, AS
23 DEFINED IN SECTION 12-240-104 (2); OR

24 (C) A FELLOW ENROLLED IN AN APPROVED FELLOWSHIP, AS
25 DEFINED IN SECTION 12-240-104 (1);

26 (III) AN ADVANCED PRACTICE REGISTERED NURSE, AS DEFINED IN
27 SECTION 12-255-104 (1); A REGISTERED NURSE, AS DEFINED IN SECTION

1 12-255-104 (11); OR A MIDWIFE, OTHER THAN A DIRECT-ENTRY MIDWIFE
2 OR CERTIFIED NURSE MIDWIFE, PRACTICING IN THIS STATE WHOSE SCOPE
3 OF PRACTICE INCLUDES PERFORMING INTIMATE EXAMINATIONS; OR

4 (IV) A DIRECT-ENTRY MIDWIFE REGISTERED PURSUANT TO
5 ARTICLE 225 OF TITLE 12.

6 (d) "PATIENT" MEANS AN INDIVIDUAL UNDER THE CARE OF A
7 LICENSED HEALTH-CARE PROVIDER OR HEALTH-CARE FACILITY OR THE
8 PATIENT'S AUTHORIZED REPRESENTATIVE.

9 (e) "PATIENT'S AUTHORIZED REPRESENTATIVE" MEANS AN
10 INDIVIDUAL WHO IS AUTHORIZED TO MAKE HEALTH-CARE DECISIONS FOR
11 OR EXERCISE RIGHTS ON BEHALF OF THE PATIENT, INCLUDING, FOR A
12 PATIENT WHO IS UNDER EIGHTEEN YEARS OF AGE, THE PARENT OR LEGAL
13 GUARDIAN OF, OR THE INDIVIDUAL STANDING IN LOCO PARENTIS TO, THE
14 PATIENT.

15 (f) "REGULATOR" MEANS:

16 (I) FOR LICENSED HEALTH-CARE PROVIDERS DESCRIBED IN
17 SUBSECTIONS (6)(c)(I) AND (6)(c)(II) OF THIS SECTION, THE COLORADO
18 MEDICAL BOARD CREATED IN SECTION 12-240-105;

19 (II) FOR LICENSED HEALTH-CARE PROVIDERS DESCRIBED IN
20 SUBSECTION (6)(c)(III) OF THIS SECTION, THE STATE BOARD OF NURSING
21 CREATED IN SECTION 12-255-105; AND

22 (III) FOR LICENSED HEALTH-CARE PROVIDERS DESCRIBED IN
23 SUBSECTION (6)(c)(IV) OF THIS SECTION, THE DIRECTOR OF THE DIVISION
24 OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY
25 AGENCIES.

26 (g) "STUDENT" MEANS AN INDIVIDUAL CURRENTLY ENROLLED IN:

27 (I) AN APPROVED MEDICAL COLLEGE, AS DEFINED IN SECTION

1 12-240-104 (3);

2 (II) AN APPROVED EDUCATION PROGRAM, AS DEFINED IN SECTION
3 12-255-104 (2), FOR PROFESSIONAL NURSING; OR

4 (III) A TRAINING PROGRAM APPROVED BY THE DIRECTOR OF THE
5 DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF
6 REGULATORY AGENCIES, AS DESCRIBED IN SECTION 12-225-104 (4)(c).

7 (h) "TRAINEE" MEANS AN INDIVIDUAL ENROLLED IN OR OTHERWISE
8 PARTICIPATING IN TRAINING, PRACTICAL EXPERIENCE, PRACTICUM, OR ANY
9 OTHER EXPERIENTIAL OR CLINICAL PROGRAM THAT IS REQUIRED PURSUANT
10 TO ARTICLE 225, 240, OR 255 OF TITLE 12 FOR THE INDIVIDUAL TO BECOME
11 A LICENSED HEALTH-CARE PROVIDER.

12 (i) "WHISTLEBLOWER" MEANS AN INDIVIDUAL WHO HAS
13 KNOWLEDGE OF AN ALLEGED VIOLATION OF THIS SECTION.

14 **SECTION 3. Appropriation.** For the 2023-24 state fiscal year,
15 \$32,915 is appropriated to the department of public health and
16 environment for use by the health facilities and emergency medical
17 services division. This appropriation is from the general fund and is based
18 on an assumption that the department will require an additional 0.4 FTE.
19 To implement this act, the division may use this appropriation for
20 administration and operations related to operations management.

21 **SECTION 4. Act subject to petition - effective date.** This act
22 takes effect January 1, 2024; except that, if a referendum petition is filed
23 pursuant to section 1 (3) of article V of the state constitution against this
24 act or an item, section, or part of this act within the ninety-day period
25 after final adjournment of the general assembly, then the act, item,
26 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2024 and, in such case, will take
2 effect on the date of the official declaration of the vote thereon by the
3 governor.