

CHAPTER 262

HEALTH AND ENVIRONMENT

HOUSE BILL 23-1077

BY REPRESENTATIVE(S) Willford and Garcia, Duran, Amabile, Bacon, Bird, Bockenfeld, Boesenecker, Bottoms, Brown, deGruy Kennedy, Dickson, English, Froelich, Hamrick, Kipp, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Martinez, McCormick, McLachlan, Michaelson Jenet, Ricks, Snyder, Story, Titone, Valdez, Vigil, Weinberg, Weissman, Young, McCluskie, Bradley, Gonzales-Gutierrez, Jodeh, Joseph, Marshall, Ortiz, Sharbini, Sirota, Velasco;
also SENATOR(S) Winter F. and Jaquez Lewis, Baisley, Bridges, Coleman, Cutter, Danielson, Exum, Gardner, Ginal, Gonzales, Hansen, Kirkmeyer, Kolker, Liston, Lundeen, Moreno, Pelton B., Pelton R., Rich, Roberts, Rodriguez, Smallwood, Sullivan, Will, Zenzinger, Fenberg.

AN ACT

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

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

SECTION 1. In Colorado Revised Statutes, **add** 12-30-122 as follows:

12-30-122. Intimate examination of sedated or unconscious patient - informed consent required - definitions. (1) (a) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, NEITHER A LICENSEE, NOR A STUDENT OR TRAINEE UNDER THE SUPERVISION OF A LICENSEE, SHALL PERFORM AN INTIMATE EXAMINATION OF A SEDATED OR UNCONSCIOUS PATIENT UNLESS THE PATIENT HAS PROVIDED SPECIFIC INFORMED CONSENT TO THE EXAMINATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

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

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

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

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

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

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

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

(V) PROVIDES THE PATIENT THE ABILITY TO CONSENT TO OR DECLINE THE FOLLOWING:

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

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

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

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

(c) SIGN THE WRITTEN OR ELECTRONIC DOCUMENT.

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

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

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

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

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

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

(5) NOTHING IN THIS SECTION AFFECTS THE ABILITY TO PERFORM A MEDICAL FORENSIC EXAMINATION, INCLUDING THE COLLECTION OF EVIDENCE, IN CONNECTION

WITH AN ALLEGED SEXUAL ASSAULT OR OTHER CRIME OR THE INVESTIGATION OF AN ALLEGED SEXUAL ASSAULT OR OTHER CRIME, PURSUANT TO APPLICABLE LAWS.

(6) AS USED IN THIS SECTION:

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

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

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

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

(d) "LICENSEE" MEANS:

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

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

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

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

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

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

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

(e) "PATIENT" MEANS AN INDIVIDUAL UNDER THE CARE OF A HEALTH-CARE PROVIDER OR THE PATIENT'S AUTHORIZED REPRESENTATIVE.

(f) "PATIENT'S AUTHORIZED REPRESENTATIVE" MEANS AN INDIVIDUAL WHO IS AUTHORIZED TO MAKE HEALTH-CARE DECISIONS FOR OR EXERCISE RIGHTS ON

BEHALF OF THE PATIENT, INCLUDING, FOR A PATIENT WHO IS UNDER EIGHTEEN YEARS OF AGE, THE PARENT OR LEGAL GUARDIAN OF, OR THE INDIVIDUAL STANDING IN LOCO PARENTIS TO, THE PATIENT.

(g) "REGULATOR" MEANS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) NAMES ONE OR MORE LICENSED HEALTH-CARE PROVIDERS WHOM THE PATIENT MAY AUTHORIZE TO PERFORM THE INTIMATE EXAMINATION;

(IV) STATES WHETHER THERE MAY BE ONE OR MORE STUDENTS OR TRAINEES WHOM THE PATIENT MAY AUTHORIZE TO PERFORM AN INTIMATE EXAMINATION FOR EDUCATIONAL OR TRAINING PURPOSES OR TO OBSERVE OR OTHERWISE BE PRESENT

AT THE EXAMINATION, EITHER IN PERSON OR THROUGH ELECTRONIC MEANS, AND IDENTIFIES THE STUDENTS OR TRAINEES BY NAME; AND

(V) PROVIDES THE PATIENT THE ABILITY TO CONSENT TO OR DECLINE THE FOLLOWING:

(A) AN INTIMATE EXAMINATION FOR DIAGNOSIS OR TREATMENT, TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;

(B) AN INTIMATE EXAMINATION FOR EDUCATIONAL OR TRAINING PURPOSES, TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER; AND

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

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

(c) SIGN THE WRITTEN OR ELECTRONIC DOCUMENT.

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

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

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

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

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

(4) (a) (I) IF A HEALTH-CARE FACILITY VIOLATES THIS SECTION, OR RETALIATES AGAINST AN INDIVIDUAL, INCLUDING A WHISTLEBLOWER, FOR FILING A COMPLAINT REGARDING A VIOLATION OF THIS SECTION WITH THE DEPARTMENT OR A REGULATOR OR FOR OTHERWISE COMPLAINING TO ANY OTHER PERSON, THE AGGRIEVED INDIVIDUAL MAY FILE A COMPLAINT WITH THE DEPARTMENT. THE DEPARTMENT MAY RECEIVE AND INVESTIGATE COMPLAINTS FILED PURSUANT TO THIS SUBSECTION (4)(a) AGAINST A HEALTH-CARE FACILITY AND, AS APPROPRIATE, MAY REFER MATTERS RELATED TO A LICENSED HEALTH-CARE PROVIDER OR A STUDENT OR TRAINEE UNDER

THE SUPERVISION OF A LICENSED HEALTH-CARE PROVIDER TO THE APPROPRIATE REGULATOR.

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

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

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

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

(6) AS USED IN THIS SECTION:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) "REGULATOR" MEANS:

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

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

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

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

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

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

(III) A TRAINING PROGRAM APPROVED BY THE DIRECTOR OF THE DIVISION OF

PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES, AS DESCRIBED IN SECTION 12-225-104 (4)(c).

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

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

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

SECTION 4. Act subject to petition - effective date. This act takes effect January 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 25, 2023