

LE: Please
remove double
underlining
before returning
to drafter.

HB1077_L.005

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Health & Human Services.

HB23-1077 be amended as follows:

UNEDITED
UNREVISED
REDRAFT
3/29/23
Double underlining
denotes changes from
prior draft

1 Amend reengrossed bill, page 9, strike lines 3 through 27.

2 Strike page 10.

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

4 **"25-3-130. 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, A HEALTH-CARE
7 FACILITY SHALL NOT PERMIT A LICENSED HEALTH-CARE PROVIDER, OR A
8 STUDENT OR TRAINEE UNDER THE SUPERVISION OF A LICENSED
9 HEALTH-CARE PROVIDER, TO PERFORM AN INTIMATE EXAMINATION OF A
10 SEDATED OR UNCONSCIOUS PATIENT AT THE HEALTH-CARE FACILITY
11 UNLESS THE PATIENT HAS PROVIDED SPECIFIC INFORMED CONSENT TO THE
12 EXAMINATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

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

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

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

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

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

30 (I) A LICENSED HEALTH-CARE PROVIDER TO PERFORM AN INTIMATE
31 EXAMINATION OF A PATIENT WHO IS SEDATED OR UNCONSCIOUS WITHOUT
32 OBTAINING THE PATIENT'S SPECIFIC INFORMED CONSENT IN EMERGENCY
33 SITUATIONS WHEN THE INTIMATE EXAMINATION IS MEDICALLY NECESSARY
34 FOR THE LIFE OR WELL-BEING OF THE PATIENT, BUT THE LICENSED
35 HEALTH-CARE PROVIDER MUST MAKE A RECORD OF PERFORMING THE
36 EXAMINATION WITHOUT OBTAINING THE PATIENT'S SPECIFIC INFORMED
37 CONSENT, INCLUDING AN EXPLANATION OF THE REASON FOR NOT
38 OBTAINING THE PATIENT'S CONSENT, AND PROVIDE THE RECORD TO THE

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/29/23
Double underlining
denotes changes from
prior draft

- 1 PATIENT ONCE THE PATIENT IS NO LONGER UNDER SEDATION OR
2 UNCONSCIOUS; OR
- 3 (II) A LICENSED HEALTH-CARE PROVIDER WHO HAS OBTAINED THE
4 PATIENT'S CONSENT TO PROVIDE HEALTH CARE THAT INCLUDES AN
5 INTIMATE EXAMINATION TO PERFORM THE INTIMATE EXAMINATION IF THE
6 LICENSED HEALTH-CARE PROVIDER HAS INFORMED THE PATIENT OF THE
7 INTIMATE EXAMINATION IN THE COURSE OF OBTAINING THE PATIENT'S
8 CONSENT TO THE HEALTH CARE.
- 9 (2) TO OBTAIN SPECIFIC INFORMED CONSENT TO PERFORM AN
10 INTIMATE EXAMINATION ON A SEDATED OR UNCONSCIOUS PATIENT, A
11 HEALTH-CARE FACILITY SHALL, DURING A PRE-OPERATIVE APPOINTMENT
12 BEFORE THE PROCEDURE AT WHICH THE EXAMINATION WILL BE
13 PERFORMED OR, IN THE ABSENCE OF A PRE-OPERATIVE APPOINTMENT, AS
14 SOON AS THE PATIENT'S LICENSED HEALTH-CARE PROVIDER DETERMINES
15 THE NEED FOR THE EXAMINATION:
- 16 (a) PROVIDE A WRITTEN OR ELECTRONIC DOCUMENT TO THE
17 PATIENT, SEPARATE FROM ANY OTHER NOTICE OR AGREEMENT, THAT:
- 18 (I) INCLUDES THE FOLLOWING HEADING AT THE TOP OF THE
19 DOCUMENT, IN NO SMALLER THAN EIGHTEEN-POINT, BOLD-FACED TYPE:
20 "CONSENT FOR EXAMINATION OF BREASTS, PELVIC REGION,
21 RECTUM, AND/OR PROSTATE";
- 22 (II) SPECIFIES THE NATURE AND PURPOSE OF THE INTIMATE
23 EXAMINATION;
- 24 (III) NAMES ONE OR MORE LICENSED HEALTH-CARE PROVIDERS
25 WHOM THE PATIENT MAY AUTHORIZE TO PERFORM THE INTIMATE
26 EXAMINATION;
- 27 (IV) STATES WHETHER THERE MAY BE ONE OR MORE STUDENTS OR
28 TRAINEES WHOM THE PATIENT MAY AUTHORIZE TO PERFORM AN INTIMATE
29 EXAMINATION FOR EDUCATIONAL OR TRAINING PURPOSES OR TO OBSERVE
30 OR OTHERWISE BE PRESENT AT THE EXAMINATION, EITHER IN PERSON OR
31 THROUGH ELECTRONIC MEANS, AND IDENTIFIES THE STUDENTS OR
32 TRAINEES BY NAME; AND
- 33 (V) PROVIDES THE PATIENT THE ABILITY TO CONSENT TO OR
34 DECLINE THE FOLLOWING:
- 35 (A) AN INTIMATE EXAMINATION FOR DIAGNOSIS OR TREATMENT,
36 TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;
- 37 (B) AN INTIMATE EXAMINATION FOR EDUCATIONAL OR TRAINING
38 PURPOSES, TO BE PERFORMED BY A LICENSED HEALTH-CARE PROVIDER;
39 AND
- 40 (C) ONE OR MORE, BUT NO MORE THAN THREE, ADDITIONAL
41 INTIMATE EXAMINATIONS FOR EDUCATIONAL OR TRAINING PURPOSES, TO
42 BE PERFORMED BY UP TO THREE DIFFERENT STUDENTS OR TRAINEES;
- 43 (b) OBTAIN THE SIGNATURE OF THE PATIENT ON THE WRITTEN OR

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/29/23
Double underlining
denotes changes from
prior draft

1 ELECTRONIC DOCUMENT, WHICH ACT MUST BE WITNESSED BY A THIRD
2 PARTY; AND
3 (c) SIGN THE WRITTEN OR ELECTRONIC DOCUMENT.
4 (3) (a) FOR PURPOSES OF COMPLYING WITH SUBSECTION (2) OF THIS
5 SECTION, A HEALTH-CARE FACILITY MAY:
6 (I) DEVELOP AND USE ITS OWN WRITTEN OR ELECTRONIC
7 DOCUMENT, SO LONG AS THE DOCUMENT SATISFIES THE REQUIREMENTS OF
8 SUBSECTION (2) OF THIS SECTION; OR
9 (II) USE A WRITTEN OR ELECTRONIC DOCUMENT DEVELOPED BY
10 THE DEPARTMENT FOR USE BY HEALTH-CARE FACILITIES AND LICENSED
11 HEALTH-CARE PROVIDERS, SO LONG AS THE DOCUMENT SATISFIES THE
12 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.
13 (b) IF THE DEPARTMENT DEVELOPS A WRITTEN OR ELECTRONIC
14 DOCUMENT FOR USE BY HEALTH-CARE FACILITIES, THE DEPARTMENT
15 SHALL DEVELOP A SINGLE, CONSISTENT DOCUMENT FOR USE BY ALL
16 HEALTH-CARE FACILITIES AND ALL LICENSED HEALTH-CARE PROVIDERS,
17 REGARDLESS OF PRACTICE AREA, THAT COMPLIES WITH THE
18 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.
19 (c) THE HEALTH-CARE FACILITY SHALL MAKE THE COMPLETED,
20 SIGNED SPECIFIC INFORMED CONSENT DOCUMENT AVAILABLE TO THE
21 PATIENT."

22 Renumber succeeding subsections accordingly.

23 Page 11, line 8, after "COMPLAINT" insert "REGARDING A VIOLATION OF
24 THIS SECTION".

25 Page 13, line 6, strike "(5)(c)(I) AND (5)(c)(II)" and substitute "(6)(c)(I)
26 AND (6)(c)(II)".

27 Page 13, line 9, strike "(5)(c)(III)" and substitute "(6)(c)(III)".

28 Page 13, line 12, strike "(5)(c)(IV)" and substitute "(6)(c)(IV)".

** ** ** *