

2020 Regular Session

HOUSE BILL NO. 435

BY REPRESENTATIVE JORDAN

HEALTH/MEDICAL TREATMENT: Provides relative to nonconsensual pelvic or rectal examinations by health care providers and medical students

1 AN ACT

2 To enact Subpart B-1 of Part II of Chapter 5-D of Title 40 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 40:1160.1 through 1160.4, relative to
4 nonconsensual pelvic and rectal examinations; to provide methods by which consent
5 shall be obtained by the patient or personal healthcare representative; to provide for
6 definitions; to provide for exceptions to obtaining informed consent from the patient
7 or personal healthcare representative; to provide for penalties; to provide for learners
8 in a clinical setting; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart B-1 of Part II of Chapter 5-D of Title 40 of the Louisiana Revised
11 Statutes of 1950, comprised of R.S. 40:1160.1 through 1160.4, is hereby enacted to read as
12 follows:

13 SUBPART B-1. CONSENT TO MEDICAL EXAMINATIONS

14 §1160.1. Title

15 This Subpart shall be known and may be cited as the "Consent to Medical
16 Examinations Act".

17 §1160.2. Definitions

18 As used in this Subpart, the following terms have the meanings ascribed to
19 them unless otherwise provided for or unless the context otherwise indicates:

1 (1) "Anesthesia" means a drug-induced loss of consciousness, by use of any
2 anesthetic induction agent or otherwise, during which patients are not arousable even
3 by painful stimulation, as defined by the Louisiana State Board of Medical
4 Examiners.

5 (2) "Examination" means a pelvic or rectal examination.

6 (3) "Healthcare provider" means a physician or other healthcare practitioner
7 licensed, certified, registered, or otherwise authorized to perform specified
8 healthcare services consistent with state law.

9 (4) "Learner" means any person enrolled in a medical, nursing, or allied
10 health education program. "Learner" shall also mean a medical resident, intern, or
11 student undergoing a course of instruction or participating in a clinical training or
12 residency program.

13 (5) "Patient" means a person who receives or has received medical treatment
14 or services from an individual or institution licensed to provide medical treatment
15 in this state.

16 (6) "Pelvic examination" means the physical examination of an individual's
17 reproductive organs.

18 (7) "Rectal examination" means relating to or affecting the rectum.

19 (8) "Personal healthcare representative" has the meaning as ascribed in R.S.
20 40:1155.2(7).

21 §1160.3. Consent to medical examinations; anesthetized patients; penalties

22 A. A healthcare provider licensed or certified to practice a profession shall
23 not perform a pelvic or rectal examination, hereinafter referred to as "examination",
24 on an anesthetized or unconscious patient unless at least one of the following
25 conditions is met:

26 (1) The patient or the personal healthcare representative provides written
27 consent to the examination, and the examination is necessary for instructional,
28 preventive, diagnostic, or treatment purposes.

1 (2) The patient or the personal healthcare representative has provided
2 informed consent to a surgical procedure or examination to be performed on the
3 patient, and the performance of an examination is within the scope of care ordered
4 for the surgical procedure or examination.

5 (3)(a) The patient is unconscious and incapable of providing consent, and the
6 examination is medically necessary.

7 (b) A healthcare provider who performs an examination pursuant to this
8 Paragraph shall inform the patient that an additional examination was performed and
9 the nature of the examination. The healthcare provider shall notify the patient of the
10 examination at a reasonable time before the patient is discharged from his care.

11 B. Any violation of the provisions of this Section may constitute grounds for
12 adverse licensure action by the applicable professional licensing board exercising
13 jurisdiction over the healthcare provider.

14 1160.4. Requirement for examinations performed by learners

15 A. Learners in a clinical setting, including but not limited to an operating
16 room, when the patient is under general anesthesia, shall only perform an
17 examination for teaching purposes when all of the following conditions are met:

18 (1) The examination is explicitly consented to by the patient.

19 (2) The examination is medically related to the planned procedure.

20 (3) The examination is performed by a learner who has been recognized by
21 the patient as a part of his care team.

22 (4) The examination is conducted under direct supervision by the educator.

23 B. Any violation of the provisions of this Section shall constitute grounds for
24 adverse action by the medical education program for any learner and shall constitute
25 grounds for adverse licensure action by the appropriate professional licensing board
26 for any licensed individual.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 435 Reengrossed

2020 Regular Session

Jordan

Abstract: Prohibits nonconsensual pelvic and rectal examinations on patients performed by healthcare providers and learners.

Proposed law provides definitions for the following terms: anesthesia, examination, healthcare provider, learner, patient, pelvic examination, rectal examination, and personal healthcare representative.

Proposed law provides that healthcare providers shall not perform a pelvic or rectal examination on an anesthetized or unconscious patient unless certain conditions have been met.

Those conditions are:

- (1) That written consent shall be given by the patient or personal healthcare representative to the examination and that the examination is necessary for instructional, preventive, diagnostic, or treatment purposes.
- (2) Informed consent has been given and the examination is within the scope of care for the patient.
- (3) The patient is unconscious and incapable of providing consent and the examination is medically necessary.

Proposed law provides that the healthcare provider who performs an examination pursuant to proposed law shall notify the patient that an additional examination was performed and the nature of the examination. Further provides that the patient shall be notified at a reasonable time before the patient is discharged from the healthcare provider's care.

Proposed law provides that any violation of proposed law may constitute grounds for adverse licensure action by the appropriate professional licensing board exercising jurisdiction over the healthcare provider.

Proposed law provides that a learner in a clinical setting shall only perform an examination on a patient who is under general anesthesia when all of the following conditions are met.

Those conditions are:

- (1) The examination is explicitly consented to by the patient.
- (2) The examination is medically related to the procedure the patient is undergoing.
- (3) The learner is recognized by the patient as a part of the patient's care team.
- (4) The examination was conducted under the direct supervision of an educator.

Proposed law provides that a learner who violates proposed law shall be subjected to adverse action by the medical education program and adverse licensure action by the appropriate professional licensing board for any licensed individual.

(Adds R.S. 40:1160.1-1160.4)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Clarify that a "healthcare provider" means a physician or other healthcare practitioner licensed, certified, registered, or otherwise authorized to perform specified healthcare services consistent with state law.
3. Add a definition that a "learner" means any person enrolled in a medical, nursing, or allied health education program including but not limited to a medical resident, intern, or student who is taking a course or participating in a clinical training or residency program.
4. Clarify the meaning of a pelvic or rectal examination.
5. State that a "personal healthcare representative" has the meaning ascribed in present law.
6. Clarify the conditions in which an examination may be performed on a patient who is under anesthesia.
7. Remove language relative to the patient signing a document to consent to having an additional examination performed during an already scheduled procedure.
8. Remove the criminal penalties for a healthcare provider associated with violating proposed law.
9. Add civil penalties for healthcare providers when violating proposed law.
10. Add requirements for an examination to be performed by learners when the patient is under general anesthesia.
11. Add civil penalties for learners when violating proposed law.