

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 1160.3, relative to
4 nonconsensual pelvic and rectal examinations; to provide methods by which
5 informed consent shall be obtained by the patient or patient's representative; to
6 provide for definitions; to provide for exceptions to obtaining informed consent from
7 the patient or patient's representative; to prohibit a medical resident, intern, or
8 student from observing or performing a pelvic or rectal examination on a patient
9 without the patient's informed consent; to provide for penalties and fines for
10 healthcare providers; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Subpart B-1 of Part II of Chapter 5-D of Title 40 of the Louisiana Revised
13 Statutes of 1950, comprised of R.S. 40:1160.1 through 1160.3, is hereby enacted to read as
14 follows:

15 SUBPART B-1. INFORMED CONSENT TO MEDICAL EXAMINATIONS

16 §1160.1. Title

17 This Subpart shall be known and may be cited as the "Informed Consent to
18 Medical Examinations Act".

1 §1160.2. Definitions

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

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

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

9 (3) "Healthcare provider" means a person, partnership, limited liability
10 partnership, limited liability company, corporation, facility, or institution that
11 provides healthcare or professional services to individuals receiving a pelvic or rectal
12 examination.

13 (4) "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 (5) "Pelvic examination" is the physical examination of a woman's
17 reproductive organs performed by a healthcare provider.

18 (6) "Rectal examination" is an internal examination of the rectum performed
19 by a healthcare provider.

20 (7) "Representative" means the parent of a minor patient, tutor, curator, or
21 other legal agent of the patient.

22 §1160.3. Informed consent to medical examinations; anesthetized patients; penalties

23 A. A healthcare provider licensed or certified to practice a profession, or a
24 medical resident, intern, or student undergoing a course of instruction or
25 participating in a clinical training or residency program, shall not perform a pelvic
26 or rectal examination, hereinafter referred to as "examination", on an anesthetized
27 or unconscious patient unless at least one of the following conditions is met:

1 (1) The patient or the patient's representative provides informed consent to
2 the examination, and the examination is necessary for preventive, diagnostic, or
3 treatment purposes.

4 (2) The patient or the patient's representative has provided written consent
5 to a surgical procedure or diagnostic examination to be performed on the patient, and
6 the performance of an examination is within the scope of care ordered for the
7 surgical procedure or diagnostic examination.

8 (3) The patient is unconscious and incapable of providing consent, and the
9 examination is necessary for diagnostic or treatment purposes.

10 (4) A court has ordered the performance of the examination for the purpose
11 of collection of evidence.

12 B. In order to obtain informed consent to perform an examination on an
13 anesthetized or unconscious patient, the healthcare provider shall:

14 (1) Provide the patient or the patient's representative with a separate written
15 or electronic document that provides all of the following:

16 (a) A notice that states at the top of the document in not smaller than
17 eighteen-point bold face type: "CONSENT FOR EXAMINATION OF PELVIC
18 REGION" or "CONSENT FOR EXAMINATION OF RECTUM AREA".

19 (b) A statement that specifies the nature and purpose of the examination.

20 (c) A statement that states the name of the healthcare provider who the
21 patient or patient's representative may authorize to perform the examination.

22 (d) A statement that states whether there may be a resident, intern, or student
23 whom the patient or patient's representative authorizes to perform an additional
24 examination for educational or training purposes.

25 (e) A series of check boxes that allow the patient or patient's representative
26 to do one of the following:

27 (i) Consent to the examination for diagnosis or treatment and an additional
28 examination performed by a medical resident, intern, or student for an education or
29 training purpose.

1 (ii) Consent to the examination only for diagnosis or treatment and do not
2 consent to an additional examination to be performed by a medical resident, intern,
3 or student for educational or training purposes.

4 (iii) Decline to consent to the examination.

5 (2) Sign and date the written or electronic document.

6 C. A healthcare provider who fails to comply with the provisions of this
7 Subpart shall be subject to disciplinary action pursuant to R.S. 37:1285 and R.S.
8 37:1285.2.

9 D. Whoever violates any provisions of this Subpart shall, for each offense,
10 be fined no less than two hundred and fifty dollars nor more than five hundred
11 dollars.

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 Original

2020 Regular Session

Jordan

Abstract: Prohibits nonconsensual pelvic and rectal examinations on patient's performed by healthcare providers and medical residents, interns, or students.

Proposed law provides that healthcare providers or medical residents, interns, or students shall not perform pelvic or rectal examinations on an anesthetized or unconscious patient without informed consent.

Proposed law requires that informed consent shall be given by the patient or patient's representative to provide informed written consent to the examination. Further requires that the examination is necessary for preventive, diagnostic, or treatment purposes.

Proposed law provides one or more conditions shall be met in obtaining informed consent. Those conditions shall be: (1) the examination is necessary for preventive care for the patient, (2) informed consent has been given and the examination is within the scope of care for the patient, or (3) a court has directed that the examination is necessary for collection of evidence.

Proposed law requires the healthcare provider to obtain informed consent by a written or electronic document where the document specifically states what the document is, the nature and reason for the examination, and the healthcare provider and medical resident, student, or intern assisting with the examination.

Proposed law provides for ways to consent to an examination in which a medical resident, student, or intern would either be present during the examination for educational purposes or not be allowed to do so.

Proposed law provides that any healthcare provider who violates proposed law shall be subject to disciplinary action and investigation pursuant to present law.

Proposed law provides that any healthcare provider who violates proposed law shall be fined no less that \$250 and no more than \$500.

(Adds R.S. 40:1160.1-1160.3)