

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4953

By Delegate Young

[Introduced January 22, 2024; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-67-1, §16-67-2, and §16-67-3, all relating to requiring informed consent for
 3 pelvic, rectal, and prostate examinations, providing definitions, and listing an effective
 4 date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 67. INFORMED CONSENT IN PELVIC, RECTAL, AND PROSTATE EXAMINATIONS.

§16-67-1. Informed consent in pelvic, rectal, and prostate examinations.

1 (a) General rule.-- A health care provider, in the course of participating in or overseeing a
 2 professional instruction or clinical training program, owes a duty to a patient to obtain specific
 3 informed consent, in verbal and written form, before knowingly performing any of the following
 4 examinations on a patient who is anesthetized or unconscious in a facility that provides health care
 5 services:

- 6 (1) Pelvic examination.
- 7 (2) Rectal examination.
- 8 (3) Prostate examination.

9 (b) Exceptions: subsection (a) does not apply if:

- 10 (1) The examination is within the scope of care ordered for the patient; or
- 11 (2) The examination is necessary in the case of a medical emergency for the purpose of
 12 diagnosis or treatment and the patient is incapable of providing specific informed consent.

13 (c) Liability:

14 A health care provider who is reported to the West Virginia Board of Medicine under §30-3-
 15 14 of this code for a violation of this section shall be investigated by that board. In the event that a
 16 student participating in and being overseen by a health care provider as part of the professional
 17 instruction or clinical training program is reported to the West Virginia Board of Medicine for a

18 violation of this section, the health care provider overseeing the student's professional instruction
 19 or clinical training program shall be investigated by to the West Virginia Board of Medicine under
 20 §30-3-14 of this code.

21 (d) Delegation.-- A health care provider may delegate the task of obtaining the specific
 22 informed consent of a patient to a qualified practitioner for an examination under subsection (a).
 23 For the purpose of this subsection, a qualified practitioner may not be a student participating in or
 24 being overseen by a health care provider as part of the professional instruction or clinical training
 25 program.

§16-67-2. Definitions.

1 Definitions.-- As used in this section, the following words and phrases shall have the
 2 meanings given to them in this subsection:

3 "Health care provider" means a primary health care center or a person, including a
 4 corporation, university or other educational institution licensed or approved by the state to provide
 5 health care or professional medical services as a physician; a physician assistant; a certified
 6 registered nurse practitioner; or a registered nurse under §30-7-1, et seq., who is authorized under
 7 the registered nurse's scope of practice to perform the procedure as delegated by the physician; or
 8 a registered nurse authorized to administer anesthesia under §30-7-15 (relating to anesthesia); a
 9 certified nurse midwife; hospital; birth center; ambulatory surgical facility; and an officer,
 10 employee, or agent of any of them acting in the course and scope of employment.

11 "Hospital" means any institution, place, building or agency in which an accommodation of
 12 five or more beds is maintained, furnished or offered for the hospitalization of the sick or injured:
 13 Provided, That nothing contained in this article shall apply to nursing homes, rest homes, personal
 14 care facilities, homes for the aged, extended care facilities not operated in connection with a
 15 hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or
 16 other similar places that furnish to their guests only board and room, or either of them: *Provided,*
 17 however, That the hospitalization, care or treatment in a household, whether for compensation or

18 not, of any person related by blood or marriage, within the degree of consanguinity of second
 19 cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the
 20 premises a hospital or extended care facility operated in connection with a hospital, within the
 21 meaning of this article. "Hospital" shall include state hospitals as defined by §27-1-6 of this code.

22 "Patient" means a natural person who receives or should have received health care from a
 23 health care provider.

24 "Specific informed consent" means the consent of a patient to the performance of an
 25 examination in accordance with this section after the patient has received a description of the
 26 examination, the purpose for providing the examination and any risks or alternatives to the
 27 examination so that a reasonable, prudent patient may make an informed decision as to the
 28 examination.

§16-67-3. **Effective** **date.**

1 This article shall take effect 60 days from passage.

NOTE: The purpose of this bill is to require informed consent for all pelvic, rectal, and prostate examinations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.