



Senate Fiscal Agency
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Senate Bill 44 (Substitute S-2 as passed by the Senate)
Senate Bill 45 (as passed by the Senate)
Sponsor: Senator Paul Wojno (S.B. 44)
Senator Sylvia Santana (S.B. 45)
Committee: Health Policy

Date Completed: 11-28-23

RATIONALE

The practice of performing invasive examinations on anesthetized patients without informed consent has raised concerns about whether those exams are a violation of a person's bodily autonomy. According to testimony before the Senate Committee on Health Policy, a study of 101 medical students from seven major American medical schools concluded that 47% of medical students who conducted pelvic exams on anesthetized patients and who did not ask for informed consent before the exam were uncomfortable with their medical school's practices. It has been suggested that informed consent be required before such an examination to guarantee a patient's right to bodily autonomy.

CONTENT

Senate Bill 44 (S-2) would amend Part 161 (General Provisions) of the Public Health Code to prohibit a licensee, registrant, or medical student from performing an invasive bodily examination on an anesthetized or unconscious patient unless specified requirements were met.

Senate Bill 45 would amend Part 161 of the Public Health Code to define "invasive bodily examination" as a pelvic, vaginal, rectal, or prostate examination.

The bills are tie-barred. Senate Bill 44 is described in further detail below.

Senate Bill 44 (S-2)

Under the bill, a licensee or registrant would have to comply with the following, unless one of the conditions described below were met:

- The individual could not perform an invasive bodily examination on an anesthetized or unconscious patient.
- The individual would have to ensure that a student who was in a health profession training program did not perform an invasive bodily examination on an anesthetized or unconscious patient while performing a duty assigned during training.

(Under the Code, "licensee" means an individual to whom a license is issued under Article 15 (Occupations) of the Code. "Registrant" means an individual to whom a registration, a specialty certification, or a health profession specialty field license is issued under Article 15 of the Code.)

The bill would allow a licensee, registrant, or medical student to perform an invasive bodily examination on an anesthetized or unconscious patient if one of the following were met before the invasive bodily examination was performed:

- The patient or the patient's authorized representative provided written, informed consent to the invasive bodily examination, and the examination was necessary for preventative, diagnostic, or treatment purposes.
- The patient or the patient's authorized representative had provided written, informed consent to a surgical procedure or diagnostic examination to be performed on the patient, and the performance of the invasive bodily examination was within the scope of care ordered for the surgical procedure or diagnostic examination.
- The patient was unconscious and incapable of providing informed consent, and the invasive bodily examination was necessary for emergency diagnostic or treatment purposes.
- A court had ordered the performance of the invasive bodily examination for the purposes of collecting evidence.

In addition, the bill would require the informed consent described above to allow the patient or the patient's authorized representative to indicate whether a student could perform the invasive bodily examination.

Proposed MCL 333.16280 (S.B. 44)
MCL 333.16105 & 333.16106 (S.B. 45)

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bills 44 and 45 are reintroductions of Senate Bills 7 and 6 from the 2021-2022 Legislative Session, respectively.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Committee on Health Policy, University of Michigan (UM) Medicine developed a policy in 2019 that requires explicit consent for educational pelvic examinations.¹ Reportedly, since 2019, UM Medicine has been one of the only medical schools in the State to develop a policy of informed consent for patients regarding invasive bodily examinations. Given how few of these policies have been voluntarily adopted, the State should require a practitioner or medical student to acquire informed consent for the protection of a patient's bodily autonomy.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.

¹ Kate Specter-Bagdady, University of Michigan Medicine's Department of Obstetrics and Gynecology, *Pelvic Exams on Patients under Anesthesia*, June 2019.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.