

SUBJECT: Requiring informed consent for pelvic examinations on certain patients

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton,
Oliverson, Price, Smith, Zwiener

0 nays

WITNESSES: For — Juliana Gonzales, SAFE Alliance; Anna Biltz; Claire Luo;
(*Registered, but did not testify:* Blake Rocap, Avow; Jamaal Smith, City
of Houston, Office of the Mayor Sylvester Turner; Rachel Wolleben,
Texas Association Against Sexual Assault; Ware Wendell, Texas Watch;
Jeremy Cowan and Amber Shippam, Texas YR's; Susana Carranza;
Vanessa MacDougal)

Against — None

BACKGROUND: Occupations Code sec. 164.052(a) lists prohibited practices that if
committed by a physician or applicant for a license to practice medicine
would be grounds for denial of licensure and/or disciplinary action. Sec.
301.452(b) establishes that prohibited actions committed by a nurse are
grounds for denial of licensure or disciplinary action.

Interested parties note that under current law, patients may have multiple
pelvic examinations performed on them while they are under anesthesia
without their consent or knowledge. To increase a patient's autonomy,
legislation is needed to require medical professionals to obtain informed
consent from the patient before the patient is subjected to invasive, non-
private examinations while they are anesthetized or unconscious.

DIGEST: CSHB 1434 would prohibit a health care practitioner from performing or
delegating to another individual, including a medical student, the
performance of a pelvic examination on an anesthetized or unconscious
patient unless:

- the pelvic examination was within the standard scope of a procedure or diagnostic examination scheduled to be performed on the patient;
- the patient or the patient's legally authorized representative gave informed consent for the pelvic examination;
- the pelvic examination was necessary for diagnosis or treatment of the patient's medical condition; or
- the pelvic examination was for the purpose of collecting evidence.

Definitions. "Health care practitioner" would mean a physician, physician assistant, or advanced practice registered nurse licensed to practice in the state.

"Patient's legally authorized representative" would mean:

- a parent, managing conservator, or guardian of a patient, if the patient was a minor;
- a guardian of the patient, if the patient had been adjudicated incompetent to manage the patient's personal affairs; or
- an agent of the patient authorized under a durable power of attorney for health care.

Informed consent. To obtain informed consent to perform a pelvic examination on an unconscious or anesthetized patient, a health care practitioner would be required to:

- provide the patient or the patient's legally authorized representative with an informed consent form;
- obtain signature for the patient or the patient's representative on the form; and
- sign the informed consent form.

The informed consent form would have to:

- specify the nature and purpose of the pelvic examination;

- inform the patient or the patient's representative that a medical student or resident may be present if the patient or the patient's representative authorized the student or resident to perform or observe the pelvic examination; and
- allow the patient or patient's representative the opportunity to consent to or refuse to consent to the pelvic examination, among other provisions specified in the bill.

Disciplinary action. The bill would authorize the appropriate licensing authority to take certain disciplinary actions against a health care practitioner who violated the bill's provisions.

The bill would make conforming changes under Occupations Code sec. 164.052(a) and 301.452(b).

The bill would take effect September 1, 2021, and would apply only to a pelvic examination performed on or after the effective date.