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RAINN's Recommendations for Effective State Legislation on Involuntary Pelvic Exams

A pelvic exam is a medical procedure in which a healthcare provider examines a person's rectum and/or a woman's reproductive organs, including the vagina, cervix, uterus, and ovaries. This examination is typically conducted for various reasons, such as routine screenings, gynecological issues, or during pregnancy.

Informed consent is a fundamental principle in medical ethics, and it involves providing patients with information about a proposed medical procedure, including its purpose, potential risks and benefits, and alternative options so that the patient can make an informed decision about whether to proceed.

Involuntary pelvic exams refer to pelvic examinations that are performed without the explicit and informed consent of the patient. Students initially learn the pelvic examination skills on mannequins or nonpatient volunteers. In an operating room, students can perform this exam while a patient is under anesthesia. In this scenario, many states across the country allow physicians and medical residents to perform pelvic exams on unconscious patients during *unrelated* operations *without* receiving their informed consent. Such an exam amounts to sexual assault on the patient since it has no medical benefit and is performed without their awareness or permission. Potential harm from this unauthorized exam includes students feeling anxiety and guilt, a patient feeling violated, survivors of sexual assault experiencing post-traumatic stress disorder, and a loss of trust between the patient and her healthcare providers.

States have the opportunity to significantly shape the way consent is prioritized for patients in a healthcare setting. Requiring informed consent for invasive pelvic exams will improve the quality of every patient's experience with the medical field and maintain a person's agency over their body during medical interactions. Especially for survivors of sexual assault, ensuring that medical interactions are transparent and safe protects against retraumatization and avoidance of needed

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healthcare from fear. Transparency cannot occur without both the comfort and consent of patients and medical trainees. Requiring explicit consent for all patients will improve the physician-patient relationship and a patient's psychological and emotional well-being.

The Need for Reform

The physician-patient relationship is one built on a foundation of trust. RAINN has heard from survivors regarding unauthorized pelvic exams on patients, despite many medical institutions publicly stating they do not allow the practice. It has long been standard practice *not* to obtain the patient's consent before conducting the examination. Involuntary pelvic exams may occur in situations where a patient is unconscious and has not given explicit consent or is not aware that such an examination will take place. This lack of consent or knowledge often occurs in the context of medical education, where students or trainees may perform pelvic exams on unconscious patients without their explicit consent. Potential harm from this unauthorized exam includes students feeling anxiety and guilt, a patient feeling violated, survivors of sexual assault experiencing post-traumatic stress disorder, and a loss of trust between the patient and her healthcare providers.¹

Many medical students feel as if they cannot opt out of these exams without jeopardizing their grades and careers since they are conducted under the supervision of residents and attending physicians who write their evaluations. 90% of American medical students in a recent survey stated that they had performed a medical exam on an anesthetized patient.² 61% of medical students who had performed a pelvic exam on an anesthetized patient reported doing so without the patient's explicit consent.³ Given that many of these students were in schools where

¹ Hammoud MM, Spector-Bagdady K, O'Reilly M, Major C, Baecher-Lind L. Consent for the Pelvic Examination Under Anesthesia by Medical Students: Recommendations by the Association of Professors of Gynecology and Obstetrics. *Obstet Gynecol.* 2019 Dec;134(6):1303-1307. doi: 10.1097/AOG.0000000000003560. PMID: 31764743; PMCID: PMC6882529.

² Coleman, E. (2021, April 13). *States move to protect anesthetized women from non-consensual pelvic exams*. Route Fifty.

³ Dr. Tsai, Jennifer. (2021, November 29). *Medical students regularly practice pelvic exams on unconscious patients. should they?* ELLE.

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involuntary pelvic exams were outlawed, it's likely that in states that still allow the practice, the percentages are even higher. A later study at the University of Oklahoma found that a large majority of medical students there had performed pelvic exams on gynecological surgery patients and that nearly 75% of these women had not consented to the exam.⁴ Legislation and outside oversight are necessary to safeguard patients' rights.

Only 19% of patients reported awareness that medical students might perform pelvic examinations on them during surgery, according to one 2010 study.⁵ Furthermore, 72% of women expect to be asked for permission before an exam under anesthesia (EUA), and 62% say *they would consent if they were asked*.⁶

In recent years, there has been increased awareness and advocacy for the rights of patients to be informed and give consent for all medical procedures, including pelvic exams. American College of Obstetricians and Gynecologists (ACOG) supports explicit informed consent policies. As of now, at least 25 states have passed laws banning unauthorized pelvic exams to ensure transparency and consent is prioritized for all patients, including Illinois, Maryland, Delaware, Pennsylvania, New York, Rhode Island, Connecticut, Maine, Colorado, California, Oregon, Idaho, Florida, Virginia, Arkansas, and Arizona.

A Wisconsin teacher who was given an unauthorized pelvic exam stated that “a woman unconscious on an operating table is at her most vulnerable. If anyone is going to be penetrating...that needs to be disclosed.”⁷ Creating a universally employed consent process is instrumental as it also paves the way for all patients'

⁴ Coleman, E. (2021, April 13). *States move to protect anesthetized women from non-consensual pelvic exams*. Route Fifty.

⁵ Dr. Tsai, Jennifer. (2021, November 29). *Medical students regularly practice pelvic exams on unconscious patients. should they?* ELLE.

⁶ Ibid.

⁷ Goldberg, E. (2020, February 17). *She didn't want a pelvic exam. she received one anyway*. The New York Times. <https://www.nytimes.com/2020/02/17/health/pelvic-medical-exam-unconscious.html?referringSource=articleShare>

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awareness of their bodies to be prioritized when it comes to other exams such as prostate, urogenital, and rectal exams.

Informed Consent in the Law and U.S. Dept. of Health and Human Services Guidance

The U.S. Department of Health and Human Services (HHS) issued a memorandum 2024 addressing involuntary pelvic exams. No federal law exists criminalizing the practice and regulation of the medical field is left primarily to the states, which means state legislation is needed to protect survivors and ensure informed consent practice. In fact, in disseminating the rule HHS commended states for passing legislation on this issue.

The HHS guidance reinforced informed consent obligations for medical providers, the consequence of which may be loss of funding for the institution itself. If anything, the informed consent obligation sets a standard that state legislatures need to meet or come into alignment with. However, the guidance from HHS only applies in the context of funding under Medicare or Medicaid services. HHS cannot declare involuntary pelvic exams for what they are, which is a crime of sexual assault. State laws can and should mandate informed consent both under physician licensing and oversight, as well as through criminal punishment.

By taking these actions, states can provide protection and support for victims that the guidance from HHS cannot do (for example, they can't get a criminal protective order through a court case). Nothing in the current HHS rules or current guidance requires the loss of a medical license or impose punishment if a physician were found to have engaged in involuntary pelvic exams (most criminal convictions would impact the medical licensure). Further, current HHS rules and guidance do not provide a voice for victims, because there is no mechanism for investigation by medical licensing organizations or law enforcement. This may result in decreased reporting by survivors.

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In other words, the new HHS guidance reaffirms the requirement for informed consent in these situations as best practice. It doesn't carry any legal consequences or address the issue entirely. It is a measure that sets an expectation for health professionals to follow without truly enforcing much (especially when medical facilities already assure that their policies cover this issue). We hope that legislators addressing this issue will work with hospitals and medical professionals to ensure that informed consent becomes the state policy both in best practices and legal requirements.

RAINN's Recommendations

RAINN recommends the following to policymakers to ensure state statutes best maintain trust in medical professionals and ensure informed consent is expected by patients, especially survivors.

- Require informed consent before any possible pelvic examination, including but not limited to a person's rectum and/or a woman's reproductive organs, including the vagina, cervix, uterus, and ovaries. Such a policy provides exceptions for medically necessary exams and emergencies.

Below, we offer recommended considerations and an example of the statutory text.

We recognize that each state's code is unique and complicated. RAINN's policy department can work hand-in-hand with lawmakers and their staff to tailor these recommendations to meet each state's specific needs.

Which Practitioners Does the Law Apply to?

RAINN Recommends:

Persons covered by the statute should include licensed healthcare professionals and any person that they supervise who may perform such an exam. Occupations to consider include physician, osteopathic physician, surgeon, physician assistant, nurse practitioner, registered nurse, midwife, or emergency medical service

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personnel. Persons who may be supervised include students, residents, interns, or fellows.

Sample Statutory Language:

“Healthcare professional” means a person who is licensed, certified, registered, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession.

“Student” means any person enrolled in a health education program, including in a residency, internship, or fellowship, and is working under the supervision of a healthcare professional.

What Examinations Are Covered?

RAINN Recommends:

The type of examination covered should be inclusive of all patients and recognize that any invasive intimate examinations are harmful without consent.

Sample Statutory Language:

“Intimate examination” means the performance of a breast, pelvic, anal, rectal, prostate, or other urogenital examination

Which Patients Are Covered?

RAINN Recommends:

Patients who are incapable of consenting because of a physical condition are especially vulnerable and need to be protected. The harms that can come with these examinations are not only physical harm, but emotional harm, which often leave victims without recourse under existing criminal or civil laws.

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Sample Statutory Language:

“A healthcare professional or student may not perform or supervise the performance of any intimate examination on a patient who is sedated, anesthetized, or unconscious ...”

How is Consent Communicated?

RAINN Recommends:

Informed consent is the cornerstone of RAINN’s mission and healthcare and intimate examinations should only be performed with the informed consent of the patient. To ensure informed consent, a separate notice informing the patient about the procedure and a written consent for the intimate examination should be required.

Sample Statutory Language:

To obtain consent to perform an intimate examination on a sedated, anesthetized, or unconscious patient, a healthcare professional shall

- (1) Provide the patient or the patient’s representative with a document in writing that
 - (a) is provided separately from any other notice or agreement;*
 - (b) specifies the nature and purpose of the intimate examination;*
 - (c) includes a description of the procedure to be performed;*
 - (d) states which healthcare professional will be performing the intimate examination; and*
 - (e) identifies whether the intimate examination will be performed or observed by a student**
- (2) Obtain the signature of the patient or the patient’s representative*
- (3) Sign the informed consent form*

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What Exceptions Should Apply?

RAINN Recommends:

Healthcare professionals should be allowed to care for their patients in emergency situations, including intimate examinations. The exceptions should be similar to other situations currently in the healthcare practice, which means limited and tied directly to a patient's health. If an exception exists where an intimate examination is lawfully performed without the informed consent of the patient, the patient should be notified as soon as possible that the examination was performed.

Sample Statutory Language:

... shall not perform unless:

- (1) The patient or the patient's representative has given written informed consent to the intimate examination;*
- (2) The performance of the intimate examination is within the scope and standard of care for the procedure or diagnostic examination to be performed on the patient and the patient or the patient's representative has given informed consent;*
- (3) A medical emergency exists and the intimate examination is medically necessary for diagnosis or treatment of the patient;*
- (4) A court orders performance of the intimate examination*

What Are the Consequences for a Violation?

RAINN Recommends:

Medical licensing bodies should have the ability to take corrective action against healthcare professionals and students who violate patients by performing intimate examinations without their informed consent. Statutory language should be specific that the violation is misconduct that is actionable against the licensee. This should be done both in the statute prohibiting the practice and in any statute governing the licensure of the healthcare professional that authorizes taking adverse action against a licensee for certain actions. This allows the widest latitude for licensing bodies to take appropriate action.

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Sample Statutory Language:

A healthcare professional or student who violates this section or retaliates against an individual who reports a violation of this section engages in unprofessional conduct [misconduct][as defined in state statute], commits an act that is grounds for discipline, and is subject to discipline by the appropriate licensing board or medical education program pursuant to [insert statutory reference]

The following acts constitute grounds for denial of a license or disciplinary action:

(x) performing or supervising the performance of an intimate examination in violation of [state statute]

Model Bill for Intimate Examinations

(1) As used in this section:

(a) "Healthcare professional" means a person who is licensed, certified, registered, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession.

(b) "Intimate examination" means the performance of a breast, pelvic, anal, rectal, prostate, or other urogenital examination

(c) "Student" means any person enrolled in a health education program, including in a residency, internship, or fellowship, and is working under the supervision of a healthcare professional.

(2) A healthcare professional or student may not perform or supervise the performance of any intimate examination on a patient who is sedated, anesthetized, or unconscious unless:

(a) The patient or the patient's representative has given specific written informed consent to the intimate examination under subsection (3);

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- (b) The performance of the intimate examination is within the scope and standard of care for the procedure or diagnostic examination to be performed on the patient and the patient or the patient's representative has given informed consent;*
 - (c) A medical emergency exists and the intimate examination is medically necessary for diagnosis or treatment of the patient;*
 - (d) A court orders performance of the intimate examination for collection of evidence;*
 - (e) Nothing in this section affects the ability to perform a medical forensic examination, including the collection of evidence, in connection with an alleged sexual assault or other crime or the investigation of an alleged sexual assault or other crime, pursuant to applicable laws.*
- (3) To obtain specific written informed consent to perform an intimate examination on a sedated, anesthetized, or unconscious patient, a healthcare professional or student shall*
- (a) Provide the patient or the patient's representative with a written or electronic document that*
 - (i) is provided separately from any other notice or agreement;*
 - (ii) specifies the nature and purpose of the intimate examination;*
 - (iii) includes a description of the procedure to be performed;*
 - (iv) states which healthcare professional will be performing the intimate examination;*
 - (v) identifies whether the intimate examination will be performed or observed by a student; and*
 - (vi) provides the patient the ability to consent to or decline:*
 - 1) the intimate examination to be performed by a healthcare professional;*
 - 2) the intimate examination to be performed by a student;*
 - (b) Obtain the signature of the patient or the patient's representative*
 - (c) Sign the informed consent form*
- (4) If an intimate examination is performed on a sedated, anesthetized, or unconscious patient by a healthcare professional or a student under*

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subdivisions (2)(a)-(e) of this section, the healthcare professional or student shall notify the patient at a reasonable time before the patient is discharged from the care of the healthcare professional or the student.

(5) Nothing in this section diminishes any other requirement to obtain informed consent for an intimate examination or any other procedure

(6) A healthcare professional or student who violates this section or retaliates against an individual who reports a violation of this section engages in unprofessional conduct [misconduct][as defined in state statute #], commits an act that is grounds for discipline, and is subject to discipline by the appropriate licensing board or medical education program pursuant to [insert statutory reference]

Next Steps:

For more information about the laws in your state, please see RAINN's state law database. For additional information about involuntary pelvic exams generally, please visit RAINN's website. To schedule a call with someone on RAINN's policy team, email policy@rainn.org.