SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 1771

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 1771.

As amended, this bill provides that health care practitioners may not perform an invasive examination of a patient while the patient is under general anesthesia or otherwise unconscious without the patient providing informed written consent to the invasive examination. As used in the bill, "informed consent" means an affirmative authorization to perform an invasive examination, which authorization will not be valid unless the health care practitioner first provides the patient with a full description of the nature and attendant risks associated with the proposed invasive examination. "Invasive examination" includes any visual, tactile, or mechanical inspection of the patient's reproductive organs, rectal cavity, or breasts.

If a health care practitioner authorized to perform an invasive examination while the patient is under general anesthesia or otherwise unconscious determines that an additional invasive examination is required that is different in nature from the invasive examination to which the patient previously consented, the health care practitioner will be required to obtain a separate informed written consent prior to performing the additional invasive examination.

These informed written consent requirements will not apply in situations in which the patient is unconscious or unresponsive and it reasonably appears that emergency treatment is needed to prevent injury or death to the patient, in which case the emergency treatment provided may include any invasive examinations as are necessary to evaluate and determine the appropriate course of emergency treatment for the patient. As amended, the bill requires that a health care practitioner will notify the patient as soon as practicable that an invasive examination has been performed. Nothing in this exception to the requirements of the bill will authorize the provision of emergency treatment in any case in which the practitioner is provided, prior to emergency treatment, actual verification of an executed do not resuscitate order. Nothing in this bill shall authorize the provision of

emergency treatment that conflicts with a patient's verified Physician Orders for Life-Sustaining Treatment documentation.

The bill additionally requires health care practitioners to obtain the patient's separate informed consent, both verbally and in writing, before performing any invasive examination for educational or training purposes that would take place while the patient is under general anesthesia or otherwise unconscious. When requesting separate informed consent to conduct an invasive examination for educational or training purposes, the health care practitioner requesting informed consent will be required to advise the patient of the exact nature of the invasive examination, of the estimated number of students and other individuals who will be performing or participating in the invasive examination, and that no medical care or treatment will be denied to the patient if the patient withholds consent to an invasive examination for educational or training purposes. The bill specifies that, if the invasive examination for educational or training purposes would take place during, or in association with, a medical procedure, the consent to the invasive examination is to be obtained independently of any other consent the patient provides for the medical procedure, and it is to be made clear to the patient that the consents are being requested for separate and independent purposes.

The bill requires that a patient providing informed written consent for an invasive examination provide the written consent to the health care practitioner using a form prescribed by the Commissioner of Health. In addition to any other requirements set forth by the Commissioner of Health, the bill requires each form to meet the following requirements: (1) each form will have a heading clearly stating the nature of the examination; (2) each form will contain a full description of the nature, purpose, and attendant risks associated with the proposed invasive examination; (3) each form will indicate if the proposed invasive examination will be used for educational or training purposes; and (4) each form will be separate from any other document, consent form, notice, or agreement.

The bill provides that a health care practitioner who fails to obtain a patient's informed written consent prior to conducting an invasive examination of the patient while the patient is under general anesthesia or otherwise unconscious, except in the instances where the bill provides an exception to the informed consent requirement, will be subject to discipline for professional misconduct pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

COMMITTEE AMENDMENTS:

The committee amendments require that informed written consent be directly obtained only from the patient before an invasive examination is performed. As introduced, the bill allowed a patient's authorized representative to provide consent for the patient.

In cases of emergency in which the patient is unconscious or unresponsive and the health care practitioner performs an invasive examination of the patient, the committee amendments require that the health care practitioner notify the patient as soon as practicable that an invasive examination has been performed.

The committee amendments add clarifying language that provides that nothing in the exception to the requirements of the bill will authorize the provision of emergency treatment in any case in which the practitioner is provided, prior to emergency treatment, actual verification of an executed do not resuscitate order. The committee amendments add clarifying language that provides that nothing in this bill authorizes the provision of emergency treatment that conflicts with a patient's verified Practitioner Orders for Life-Sustaining Treatment documentation.

The committee amendments require that a patient who provides informed written consent to a health care practitioner for an invasive examination provide the consent using a form prescribed by the Commissioner of Health, and establish certain requirements for the form.

The committee amendments provide that a health care practitioner who fails to obtain a patient's informed written consent prior to conducting an invasive examination of the patient while the patient is under general anesthesia or otherwise unconscious will be subject to discipline for professional misconduct.