

SENATE BILL NO. 226

March 10, 2021, Introduced by Senators THEIS, LAUWERS, JOHNSON, RUNESTAD, GEISS, CHANG, BAYER, WOJNO, MOSS, BRINKS and POLEHANKI and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 16279 and 16279a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 16279. (1) Except as otherwise provided in this section,**
2 **a licensee or registrant shall not perform a medical treatment,**
3 **procedure, or examination on a patient who is a minor that involves**
4 **the vaginal or anal penetration of the minor unless all of the**
5 **following are met:**

1 (a) The medical treatment, procedure, or examination is within
2 the scope of practice of the licensee's or registrant's health
3 profession.

4 (b) A medical assistant or another licensee or registrant is
5 in the room while the medical treatment, procedure, or examination
6 is performed. The person providing consent under subdivision (c)
7 may waive the requirement described in this subdivision.

8 (c) Before performing the medical treatment, procedure, or
9 examination, the licensee or registrant obtains the written consent
10 of a parent, guardian, or person in loco parentis of the minor or
11 the consent of any person that is authorized by law to provide
12 consent, on the form created in section 16279a or on another form
13 that includes the same information as the form created in section
14 16279a. The written consent described in this subdivision may be
15 obtained through electronic means.

16 (2) A licensee or registrant who obtains the consent required
17 under subsection (1) for a medical treatment, procedure, or
18 examination that requires subsequent visits to perform the same
19 treatment, procedure, or examination on the minor may perform the
20 subsequent treatment, procedure, or examination on the minor
21 without obtaining the consent required under subsection (1) if the
22 subsequent treatment, procedure, or examination is performed within
23 6 months from the date of obtaining the consent required under
24 subsection (1).

25 (3) Subsection (1) does not apply in any of the following
26 circumstances:

27 (a) If the medical treatment, procedure, or examination is
28 necessary and is associated with or incident to a medical
29 emergency. As used in this subdivision, "medical emergency" means a

1 circumstance that, in the licensee's or registrant's good-faith
2 medical judgment, creates an immediate threat of serious risk to
3 the life or physical health of the patient.

4 (b) If the medical treatment, procedure, or examination
5 primarily relates to the patient's urological, gastrointestinal,
6 reproductive, gynecological, or sexual health.

7 (c) If the medical treatment, procedure, or examination is
8 performed at a children's advocacy center. As used in this
9 subdivision, "children's advocacy center" means that term as
10 defined in section 2 of the child protection law, 1975 PA 238, MCL
11 722.622.

12 (d) If the medical treatment, procedure, or examination is
13 performed for purposes of a sexual assault medical forensic
14 examination under section 21527.

15 (e) If the medical treatment, procedure, or examination is
16 performed for the purpose of measuring the patient's temperature.

17 (f) If the medical treatment, procedure, or examination is
18 performed for the purpose of rectally administering a drug or
19 medicine.

20 (4) The consent form required under subsection (1) must be
21 maintained in a patient's medical record for not less than 15 years
22 from the date on which the medical treatment, procedure, or
23 examination was performed.

24 (5) A person that knowingly violates subsection (1) is guilty
25 of a felony punishable as follows:

26 (a) For the first offense, by imprisonment for not more than 2
27 years or a fine of not more than \$5,000.00, or both.

28 (b) For a second or subsequent offense, by imprisonment for
29 not more than 5 years or a fine of not more than \$10,000.00, or

1 both.

2 (6) This section does not prohibit a person from being charged
3 with, convicted of, or punished for any other violation of law that
4 is committed by that person while violating this section.

5 (7) A court may order a term of imprisonment imposed for a
6 violation of this section to be served consecutively to a term of
7 imprisonment imposed for any other crime, including any other
8 violation of law arising out of the same transaction as the
9 violation of this section.

10 Sec. 16279a. (1) The department shall create and may
11 periodically update a standardized consent form to be used by a
12 licensee or registrant who provides a medical treatment, procedure,
13 or examination to a minor under section 16279. The department shall
14 use generally accepted standards of medical practice in determining
15 the information to be included on the form. The form must include
16 at least all of the following statements:

17 (a) That gloves are generally used for a medical treatment,
18 procedure, or examination involving vaginal or anal penetration.

19 (b) That the person providing consent under section 16279 has
20 the right to request information on whether there is a reasonable
21 alternative to the treatment, procedure, or examination that does
22 not consist of anal or vaginal penetration.

23 (c) That the person providing consent under section 16279 has
24 the right to request a clear explanation of the nature of the
25 treatment, procedure, or examination.

26 (d) That the person providing consent under section 16279 may
27 request that gloves be used during the treatment, procedure, or
28 examination.

29 (e) That a licensee or registrant generally cannot be alone in

1 the room with the patient while the treatment, procedure, or
2 examination is being performed.

3 (2) The department shall make the form publicly available on
4 its website.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.