
The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Camille Sebastien Perry.

DIGEST

LaFleur (SB 443)

Proposed law provides that any petition for damages alleging malpractice by a health care provider as defined in present law shall contain an expert report.

Proposed law provides that the plaintiff shall file the expert report no later than the 90th day after the filing of the petition alleging malpractice by a health care provider, as defined in present law.

Proposed law provides that the plaintiff shall serve on each party, or if represented by counsel, on each party's attorney, one or more expert reports, as defined in proposed law, relative to the defendant against whom an action alleging malpractice is asserted. The date for serving the report may be extended by written agreement of the parties or by the court after a hearing for good cause shown.

Proposed law provides that the expert report shall contain:

- (a) The professional background and qualifications of the expert;
- (b) A statement with supporting information that the expert is experienced in each discipline, field, specialty, or sub-specialty, whichever is applicable to the defendant and which is the subject of the report;
- (c) A listing of each document or other information reviewed by the expert in preparing the report;
- (d) Summary of the grounds for each opinion and conclusion supporting the claim, the applicable standard of care as it relates to the defendant, whether the defendant departed from such standard of care with supporting reasons, and whether the injury, harm or damage was the proximate result of the alleged departure; and
- (e) A statement that the expert has concluded that there is a reasonable basis for filing the petition.

Proposed law provides that the expert shall not be a party to the litigation nor have a material interest in its outcome.

Proposed law provides that the expert must be actively practicing in the field, specialty, or sub-specialty, whichever is applicable to the defendant health care provider, and otherwise qualified to testify, with respect to a petition for damages for malpractice by a health care provider.

Proposed law provides that the failure of the plaintiff to file the expert report as provided in proposed law shall, absent good cause established after a hearing before the court, result in dismissal, with prejudice, of the plaintiff's claims.

Proposed law provides that the provisions of proposed law shall also apply to any cross claim, counterclaim, third party demand or other incidental action against any defendant identified in proposed law.

Proposed law provides that the provisions of proposed law shall not be construed to extend any applicable prescriptive or preemptive period.

Present law (R.S. 40:1299.39.1) provides that all malpractice claims against the state, its agencies, or other persons covered by malpractice liability for state services, other than claims wherein the patients are prisoners and claims compromised or settled by the claimant and the division of administration with the concurrence of designated legal counsel for the state, shall be reviewed by a state medical review panel, to be administered by the commissioner of administration. Present law establishes the medical review panel and provides for the formation of its members and procedures and provides that no action against the state, its agencies, or a person covered by malpractice liability for state services, or his insurer, may be commenced in any court before the claimant's complaint has been presented to a state medical review panel.

Proposed law repeals present law provisions.

Present law (R.S. 40:1299.47) provides that all malpractice claims against health care providers covered by medical malpractice, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as provided in present law. Present law establishes the medical review panel and provides for the formation of its members and procedures and provides that no action against a health care provider, or his insurer, may be commenced in any court before the claimant's proposed complaint has been presented to a medical review panel.

Proposed law repeals present law provisions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 40:1299.59; repeals R.S. 40:1299.39.1 and 1299.47)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Removes applicability to architects, engineers, and land surveyors.

2. Authorizes a court to extend the date for serving an expert report after a hearing for good cause shown.
3. Repeals present law provisions relative to state medical review panels and medical review panels for private claims.