

Regular Session, 2012

SENATE BILL NO. 239

BY SENATOR MURRAY

HEALTH CARE. Provides the methods of obtaining informed consent and creates the Louisiana Medical Disclosure Panel. (gov sig)

AN ACT

To amend and reenact Part XXII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1299.39.5 through 1299.39.7, and 1299.58(C), 1299.131(A)(3), and 1300.11, and to enact R.S. 36:259(MM), relative to informed consent; to provide for methods in which informed consent may be obtained; to create the Louisiana Medical Disclosure Panel within the Department of Health and Hospitals; to provide for definitions; to provide for membership and terms; to provide for powers and duties; to provide for medical disclosure lists; to provide for exceptions to obtaining informed consent; to provide for the promulgation of rules and regulations; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 36:259(MM) is hereby enacted to read as follows:

§259. Transfer of agencies and functions to Department of Health and Hospitals

\* \* \*

**MM. The Louisiana Medical Disclosure Panel (R.S. 40:1299.39.6) is placed within the Department of Health and Hospitals and shall exercise and perform its powers, duties, functions, and responsibilities as provided by or**



1           admissible to modify or limit the authorization for performance of the procedure or  
2           procedures set forth in such consent.

3           C. Where consent to medical treatment from a patient, or from a person  
4           authorized by law to consent to medical treatment for such patient, is secured other  
5           than in accordance with Subsection A above, the explanation to the patient or to the  
6           person consenting for such patient shall include the matters set forth in ~~Paragraph (1)~~  
7           of Subsection A **of this Section** above, and an opportunity shall be afforded for  
8           asking questions concerning the procedures to be performed which shall be answered  
9           in a satisfactory manner. Such consent shall be valid and effective and is subject to  
10          proof according to the rules of evidence in ordinary cases.

11          ~~D.(1) Notwithstanding this Section or any other law to the contrary,~~  
12          ~~whenever it is determined by the hospital infection control committee or equivalent~~  
13          ~~body that an agent or employee of a hospital, or a physician having privileges at the~~  
14          ~~hospital, has been exposed to the blood or bodily fluids of a patient, in such a manner~~  
15          ~~as to create any risk that the agent, employee, or physician may become infected with~~  
16          ~~the human immunodeficiency virus or other infectious agent if the patient is infected~~  
17          ~~with the human immunodeficiency virus or other infectious agent, in accordance~~  
18          ~~with the infectious disease exposure guidelines of the Centers for Disease Control~~  
19          ~~or the infectious disease exposure standards of the health care facility where the~~  
20          ~~exposure occurred, then the hospital infection control committee may, without the~~  
21          ~~consent of the patient, conduct such tests on blood previously drawn or body fluids~~  
22          ~~previously collected as are necessary to determine whether the patient is, in fact,~~  
23          ~~infected with the virus or other agent believed to cause acquired immune deficiency~~  
24          ~~syndrome or other infectious disease. If no previously drawn blood or collected~~  
25          ~~bodily fluids are available or are suitable, the hospital may order, without the consent~~  
26          ~~of the patient, that blood, bodily fluids, or both be drawn and collected from the~~  
27          ~~patient to conduct the necessary tests.~~

28          ~~(2) Notwithstanding this Section or any other law to the contrary, whenever~~  
29          ~~it is determined by the infectious disease control officer of any law enforcement, fire~~

1 ~~service, or emergency medical service agency or organization that an agent or~~  
2 ~~employee of the agency or organization has been exposed to the blood or bodily~~  
3 ~~fluids of a patient while rendering emergency medical services, transporting, or~~  
4 ~~treating an ill or injured patient in such a manner as to create any risk that the agent~~  
5 ~~or employee may become infected with the human immunodeficiency virus or other~~  
6 ~~infectious agent if the patient is infected with the human immunodeficiency virus or~~  
7 ~~other infectious agent, in accordance with the infectious disease exposure guidelines~~  
8 ~~of the Centers for Disease Control or the infectious disease exposure standards of the~~  
9 ~~agency or organization, then the infectious disease control officer of the agency or~~  
10 ~~organization may present the facts to the infection control committee of the hospital~~  
11 ~~or other health care facility to which the patient has been transported. If the hospital~~  
12 ~~infection control committee agrees that there has been a potential exposure to the~~  
13 ~~agency or organization personnel, then the hospital infection control committee may,~~  
14 ~~while the patient is in such hospital and without the consent of the patient, conduct~~  
15 ~~such tests as are provided for in R.S. 40:1299.40(D)(1).~~

16 (3) ~~The results of the test shall not become a part of the patient's medical~~  
17 ~~record and shall be confidential, except that the hospital may inform the exposed~~  
18 ~~employee, agent, or physician, or the infectious disease control officer of the law~~  
19 ~~enforcement, fire service, or emergency medical service agency of the results of the~~  
20 ~~test.~~

21 (4) ~~In the event that the test is performed, and the results of the test are~~  
22 ~~positive, the hospital shall inform the patient of the results and shall provide such~~  
23 ~~follow-up testing and counseling as may be required according to the accepted~~  
24 ~~standard of medical care.~~

25 (5) ~~The patient shall not be charged for any tests performed under this~~  
26 ~~Subsection.~~

27 (6) ~~Nothing herein shall be construed to require the hospital to perform the~~  
28 ~~test described herein.~~

29 E.(1) ~~As used in this Subsection, "secretary" means the secretary of the~~

1 Department of Health and Hospitals:

2 0 (2)(a) D. In a suit against a physician or other health care provider involving  
3 a health care liability or medical malpractice claim which is based on the failure of  
4 the physician or other health care provider to disclose or adequately to disclose the  
5 risks and hazards involved in the medical care or surgical procedure rendered by the  
6 physician or other health care provider, the only theory on which recovery may be  
7 obtained is that of negligence in failing to disclose the risks or hazards that could  
8 have influenced a reasonable person in making a decision to give or withhold  
9 consent.

10 (b) E. Consent to medical treatment may be evidenced according to the  
11 provisions of Subsections A and C of this Section or, as an alternative, a physician  
12 or other health care provider may choose to avail himself of the lists established by  
13 the secretary **Louisiana Medical Disclosure Panel** pursuant to the provisions of ~~this~~  
14 **Subsection R.S. 40:1299.39.6** as another method by which to evidence a patient's  
15 consent to medical treatment.

16 (3) ~~The secretary shall determine which risks and hazards related to medical~~  
17 ~~care and surgical procedures must be disclosed by a physician or other health care~~  
18 ~~provider to a patient or person authorized to consent for a patient and to establish the~~  
19 ~~general form and substance of such disclosure.~~

20 (4)(a) ~~To the extent feasible, the secretary shall identify and make a thorough~~  
21 ~~examination of all medical treatments and surgical procedures in which physicians~~  
22 ~~and other health care providers may be involved in order to determine which of those~~  
23 ~~treatments and procedures do and do not require disclosure of the risks and hazards~~  
24 ~~to the patient or person authorized to consent for the patient.~~

25 (b) ~~The secretary shall prepare separate lists of those medical treatments and~~  
26 ~~surgical procedures that do and do not require disclosure and for those treatments~~  
27 ~~and procedures that do require disclosure shall establish the degree of disclosure~~  
28 ~~required and the form in which the disclosure will be made.~~

29 (c) ~~Lists prepared under Subparagraph (b) of this Paragraph together with~~

1           ~~written explanations of the degree and form of disclosure shall be promulgated~~  
2           ~~according to the Administrative Procedure Act. The form of the disclosure and~~  
3           ~~manner in which such disclosure will be made shall be subject to legislative~~  
4           ~~oversight by the House and Senate health and welfare committees. The lists~~  
5           ~~compiled and published and rules promulgated relative to the form and manner of~~  
6           ~~disclosure according to the provisions of this Subsection and evidence of such~~  
7           ~~disclosures or failure to disclose by a physician or other health care provider as~~  
8           ~~provided in Paragraphs (5) and (6) of this Subsection shall be admissible in a health~~  
9           ~~care liability suit or medical malpractice claim involving medical care rendered or~~  
10          ~~a surgical procedure performed on or after March 1, 1991.~~

11           ~~(d) At least annually, or at such other period as the secretary may determine,~~  
12          ~~the secretary shall identify and examine any new medical treatments and surgical~~  
13          ~~procedures that have been developed since its last determinations, shall assign them~~  
14          ~~to the proper list, and shall establish the degree of disclosure required and the form~~  
15          ~~in which the disclosure shall be made. The secretary shall also review and examine~~  
16          ~~such treatments and procedures for the purpose of revising lists previously published.~~  
17          ~~These determinations shall be published in the same manner as described in~~  
18          ~~Subparagraph (c) of this Paragraph.~~

19           ~~(5) Before a patient or a person authorized to consent for a patient gives~~  
20          ~~consent to any medical or surgical procedure that appears on the list requiring~~  
21          ~~disclosure, the physician or other health care provider shall disclose to the patient,~~  
22          ~~or person authorized to consent for the patient, the risks and hazards involved in that~~  
23          ~~kind of care or procedure. A physician or other health care provider may choose to~~  
24          ~~utilize the lists prepared by the secretary and shall be considered to have complied~~  
25          ~~with the requirements of this Subsection if disclosure is made as provided in~~  
26          ~~Paragraph (6) of this Subsection.~~

27           ~~(6) Consent to medical care that appears on the secretary's list requiring~~  
28          ~~disclosure shall be considered effective under this Subsection, if it is given by the~~  
29          ~~patient or a person authorized to give the consent and by a competent witness, and~~

1 if the consent specifically states, in such terms and language that a layman would be  
2 expected to understand, the risks and hazards that are involved in the medical care  
3 or surgical procedure in the form and to the degree required by the secretary under  
4 Paragraph (4) of this Subsection.

5 ~~(7)(a) In a suit against a physician or other health care provider involving a~~  
6 ~~health care liability or medical malpractice claim which is based on the negligent~~  
7 ~~failure of the physician or other health care provider to disclose or adequately to~~  
8 ~~disclose the risks and hazards involved in the medical care or surgical procedure~~  
9 ~~rendered by the physician or other health care provider:~~

10 ~~(i) Both the disclosure made as provided in Paragraph (5) of this Subsection~~  
11 ~~and the failure to disclose based on inclusion of any medical care or surgical~~  
12 ~~procedure on the secretary's list for which disclosure is not required shall be~~  
13 ~~admissible in evidence and shall create a rebuttable presumption that the~~  
14 ~~requirements of Paragraphs (5) and (6) of this Subsection have been complied with,~~  
15 ~~and this presumption shall be included in the charge to the jury; and~~

16 ~~(ii) The failure to disclose the risks and hazards involved in any medical care~~  
17 ~~or surgical procedure required to be disclosed under Paragraphs (5) and (6) of this~~  
18 ~~Subsection shall be admissible in evidence and shall create a rebuttable presumption~~  
19 ~~of a negligent failure to conform to the duty of disclosure set forth in Paragraphs (5)~~  
20 ~~and (6) of this Subsection, and this presumption shall be included in the charge to the~~  
21 ~~jury; but failure to disclose may be found not to be negligent, if there was an~~  
22 ~~emergency as defined in R.S. 40:2113.6(C) or, if for some other reason, it was not~~  
23 ~~medically feasible to make a disclosure of the kind that would otherwise have been~~  
24 ~~negligence.~~

25 ~~(b) If medical care is rendered or a surgical procedure performed with respect~~  
26 ~~to which the secretary has not made a determination regarding a duty of disclosure,~~  
27 ~~the physician or other health care provider is under the general duty to disclose~~  
28 ~~otherwise imposed by this Section.~~

29 ~~(c) In order to be covered by the provisions of this Subsection, the physician~~

1 or other health care provider who will actually perform the contemplated medical or  
2 surgical procedure shall:

3 (i) ~~Disclose the risks and hazards in the form and to the degree required by~~  
4 ~~the secretary;~~

5 (ii) ~~Disclose additional risks, if any, particular to a patient because of a~~  
6 ~~complicating medical condition, either told to the physician or other health care~~  
7 ~~provider by the patient or his representative in a medical history of the patient or~~  
8 ~~reasonably discoverable by such physician or other health care provider;~~

9 (iii) ~~Disclose reasonable therapeutic alternatives and risks associated with~~  
10 ~~such alternatives;~~

11 (iv) ~~Relate that he is obtaining a consent to medical treatment pursuant to the~~  
12 ~~lists formulated by the secretary; and~~

13 (v) ~~Provide an opportunity to ask any questions about the contemplated~~  
14 ~~medical or surgical procedure, risks, or alternatives and acknowledge in writing that~~  
15 ~~he answered such questions, to the patient or other person authorized to give consent~~  
16 ~~to medical treatment, receipt of which shall be acknowledged in writing.~~

17 F. Notwithstanding the provisions of Subsection E of this Section, consent  
18 for dental treatment rendered by dentists not performing oral and maxillofacial  
19 surgery in a hospital setting shall be governed exclusively by the provisions of R.S.  
20 40:1299.131.

21 **§1299.39.6. Louisiana Medical Disclosure Panel; creation; membership;**  
22 **powers; duties**

23 **A. As used in this Section, the following terms shall mean:**

24 **(1) "Panel" means the Louisiana Medical Disclosure Panel.**

25 **(2) "Department" means the Department of Health and Hospitals.**

26 **B. (1) The Louisiana Medical Disclosure Panel is hereby created within**  
27 **the department to determine which risks and hazards related to medical care**  
28 **and surgical procedures must be disclosed by a physician or other health care**  
29 **provider to a patient or person authorized to consent for a patient and to**

1 establish the general form and substance of such disclosure.

2 (2) The panel shall be comprised of the following members who shall be  
3 appointed by the governor and submitted to the Senate for confirmation:

4 (a) One member licensed to practice dentistry who specializes in oral and  
5 maxillofacial surgery who shall be selected from a list of nominees submitted to  
6 the governor by the Louisiana Society of Oral and Maxillofacial Surgeons.

7 (b) Four members licensed to practice law in this state of whom three  
8 shall be selected from a list of nominees submitted to the governor by the  
9 Louisiana Association for Justice, and one shall be selected from a list of  
10 nominees submitted to the governor by the Louisiana Association of Defense  
11 Counsel.

12 (c) Six members licensed to practice medicine in this state who shall be  
13 selected from a list of nominees submitted to the governor by the Louisiana  
14 State Medical Society.

15 C. The initial members of the panel shall have the following terms:

16 (1) The dentist who specializes in oral and maxillofacial surgery, one  
17 attorney, and two physicians shall each serve a term of two years, or until a  
18 successor is appointed and qualified.

19 (2) Two attorneys and two physicians shall each serve a term of four  
20 years, or until a successor is appointed and qualified.

21 (3) One attorney and two physicians shall each serve a term of six years,  
22 or until a successor is appointed and qualified.

23 (4) Thereafter, at the expiration of the term of each member of the panel,  
24 the governor shall appoint a successor and such successor shall serve for a term  
25 of six years, or until his successor is appointed and qualified.

26 D. Any member of the panel who is absent for three consecutive meetings  
27 without the consent of a majority of the panel at each such meeting may be  
28 removed by the governor at the request of the panel. Such request shall be in  
29 writing, signed by the chairman, and approved by the panel. Upon the death,

1 resignation, or removal of any member, the secretary of the department shall  
2 fill the vacancy by selection, subject to Senate confirmation, for the unexpired  
3 portion of the term.

4 E. Members of the panel shall not be entitled to per diem or any other  
5 compensation for their service but shall be entitled to reimbursement of any  
6 necessary and reasonable expense incurred in the performance of their duties  
7 on the panel, including travel expenses.

8 F. Meetings of the panel shall be held at the call of the chairman or on  
9 petition of at least three members of the panel.

10 G. At the first meeting of the panel each calendar year, the panelists shall  
11 select one of the panel members to serve as chairman and one of the panel  
12 members to serve as vice chairman, and each such officer shall serve for a term  
13 of one year. The chairman shall preside at meetings of the panel, and in his  
14 absence, the vice chairman shall preside.

15 H. The department shall provide administrative assistance to and serve  
16 as the staff for the panel.

17 I. The governor shall appoint the initial members of the panel no later  
18 than October 1, 2012, and the panel shall convene its first meeting no later than  
19 November 1, 2012.

20 J. (1) To the extent feasible, the panel shall identify and make a thorough  
21 examination of all medical treatments and surgical procedures in which  
22 physicians and other health care providers may be involved in order to  
23 determine which of those treatments and procedures do and do not require  
24 disclosure of the risks and hazards to the patient or person authorized to  
25 consent for the patient. Initially, the panel shall examine all existing medical  
26 disclosure lists and update and repromulgate those lists under the authority  
27 vested in this Section. The dentist member of the panel shall only participate  
28 in the panel's deliberation, determination, and preparation of lists of dental  
29 treatments and procedures that do and do not require disclosure.

1           **(2) The panel shall prepare separate lists of those medical treatments and**  
2           **surgical procedures that do and do not require disclosure. For those treatments**  
3           **and procedures that do require disclosure, the panel shall establish the degree**  
4           **of disclosure required, and the form in which the disclosure shall be made.**

5           **(3) Lists prepared under this Section, together with the written**  
6           **explanations of the degree and form of disclosure, shall be promulgated**  
7           **according to the Administrative Procedure Act. The form of the disclosure and**  
8           **manner in which such disclosure shall be made shall be subject to legislative**  
9           **oversight by the House and Senate health and welfare committees.**

10           **K. The lists compiled and published and rules promulgated relative to**  
11           **the form and manner of disclosure according to the provisions of this Section**  
12           **and evidence of such disclosures or failure to disclose by a physician or other**  
13           **health care provider as provided in this Section shall be admissible in a health**  
14           **care liability suit or medical malpractice claim involving medical care rendered**  
15           **or a surgical procedure performed.**

16           **L. At least annually or at such other time period as the panel may**  
17           **determine, the panel shall identify and examine any new medical treatments**  
18           **and surgical procedures that have been developed since its last determinations,**  
19           **assign them to the proper list, establish the degree of disclosure required, and**  
20           **the form in which the disclosure shall be made. The panel shall review and**  
21           **examine such treatments and procedures for the purpose of revising lists**  
22           **previously published. These determinations shall be published in the same**  
23           **manner as described in Paragraph (J)(3) of this Section.**

24           **M. Before a patient or a person authorized to consent for a patient gives**  
25           **consent to any medical or surgical procedure that appears on the panel's list**  
26           **requiring disclosure, the physician or other health care provider shall disclose**  
27           **to the patient or a person authorized to consent for the patient the risks and**  
28           **hazards involved in that kind of care or procedure. A physician or other health**  
29           **care provider may choose to utilize the lists prepared by the panel and shall be**

1 considered to have complied with the requirements of this Subsection if  
2 disclosure is made as provided in Subsection N of this Section.

3 N. Consent to medical care that appears on the panel's list requiring  
4 disclosure shall be considered effective under this Subsection if it is given in  
5 writing; signed by the patient or a person authorized to give the consent and by  
6 a competent witness; and in such terms and language that a layman would be  
7 expected to understand if the written consent specifically requires, the risks and  
8 hazards that are involved in the medical care or surgical procedure in the form  
9 and to the degree required by the panel under this Section.

10 O. (1) In a suit against a physician or other health care provider  
11 involving a health care liability or medical malpractice claim which is based on  
12 the negligent failure of the physician or other health care provider to disclose  
13 or adequately to disclose the risks and hazards involved in the medical care or  
14 surgical procedure rendered by the physician or other health care provider:

15 (a) Both the disclosure made as provided in Subsection M of this Section  
16 and the failure to disclose based on inclusion of any medical care or surgical  
17 procedure on the panel's list for which disclosure is not required shall be  
18 admissible in evidence and shall create a rebuttable presumption that the  
19 requirements of Subsections M and N of this Section have been complied with,  
20 and this presumption shall be included in the charge to the jury.

21 (b) The failure to disclose the risks and hazards involved in any medical  
22 care or surgical procedure required to be disclosed under Subsections M and  
23 N of this Section shall be admissible in evidence and shall create a rebuttable  
24 presumption of a negligent failure to conform to the duty of disclosure set forth  
25 in Subsections M and N of this Section. This presumption shall be included in  
26 the charge to the jury, but failure to disclose may be found not to be negligent,  
27 if there was an emergency as defined in R.S. 40:2113.6(C); or, if for some other  
28 reason, it was not medically feasible to make a disclosure of the kind that would  
29 otherwise have been negligence.

1           **(2) If medical care is rendered or a surgical procedure performed with**  
2           **respect to which the panel has not made a determination regarding a duty of**  
3           **disclosure, the physician or other health care provider is under the general duty**  
4           **to disclose otherwise imposed by R.S. 40:1299.39.5.**

5           **P. In order to be covered by the provisions of this Section, the physician**  
6           **or other health care provider who will actually perform the contemplated**  
7           **medical or surgical procedure shall:**

8           **(1) Disclose the risks and hazards in the form and to the degree required**  
9           **by the panel.**

10           **(2) Disclose additional risks, if any, particular to a patient because of a**  
11           **complicating medical condition, either told to the physician or other health care**  
12           **provider by the patient or his representative in a medical history of the patient**  
13           **or reasonably discoverable by such physician or other health care provider.**

14           **(3) Disclose reasonable therapeutic alternatives and risks associated with**  
15           **such alternatives.**

16           **(4) Relate that he is obtaining a consent to medical treatment pursuant**  
17           **to the lists formulated by the Louisiana Medical Disclosure Panel.**

18           **(5) Provide an opportunity to ask any questions about the contemplated**  
19           **medical or surgical procedure, risks, or alternatives and acknowledge in writing**  
20           **that he answered such questions, to the patient or other person authorized to**  
21           **give consent to medical treatment, receipt of which shall be acknowledged in**  
22           **writing.**

23           **Q. The department shall maintain a searchable database of all current**  
24           **medical disclosure lists that is available to the public through the department's**  
25           **website.**

26           **§1299.39.7. Exception to obtaining informed consent; human immunodeficiency**  
27           **virus or other infectious agents**

28           **A. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law**  
29           **to the contrary, whenever it is determined by the hospital infection control**

1           committee or equivalent body that an agent or employee of a hospital, or a  
2           physician having privileges at the hospital, has been exposed to the blood or  
3           bodily fluids of a patient, in such a manner as to create any risk that the agent,  
4           employee, or physician may become infected with the human immunodeficiency  
5           virus or other infectious agent if the patient is infected with the human  
6           immunodeficiency virus or other infectious agent, in accordance with the  
7           infectious disease exposure guidelines of the Centers for Disease Control or the  
8           infectious disease exposure standards of the health care facility where the  
9           exposure occurred, then the hospital infection control committee may, without  
10          the consent of the patient, conduct such tests on blood previously drawn or body  
11          fluids previously collected as are necessary to determine whether the patient is,  
12          in fact, infected with the virus or other agent believed to cause acquired immune  
13          deficiency syndrome or other infectious disease. If no previously drawn blood  
14          or collected bodily fluids are available or are suitable, the hospital may order,  
15          without the consent of the patient, that blood, bodily fluids, or both be drawn  
16          and collected from the patient to conduct the necessary tests.

17                B. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law  
18                to the contrary, whenever it is determined by the infectious disease control  
19                officer of any law enforcement, fire service, or emergency medical service  
20                agency or organization that an agent or employee of the agency or organization  
21                has been exposed to the blood or bodily fluids of a patient while rendering  
22                emergency medical services, transporting, or treating an ill or injured patient  
23                in such a manner as to create any risk that the agent or employee may become  
24                infected with the human immunodeficiency virus or other infectious agent if the  
25                patient is infected with the human immunodeficiency virus or other infectious  
26                agent, in accordance with the infectious disease exposure guidelines of the  
27                Centers for Disease Control or the infectious disease exposure standards of the  
28                agency or organization, then the infectious disease control officer of the agency  
29                or organization may present the facts to the infection control committee of the

1        **hospital or other health care facility to which the patient has been transported.**  
 2        **If the hospital infection control committee agrees that there has been a potential**  
 3        **exposure to the agency or organization personnel, then the hospital infection**  
 4        **control committee may, while the patient is in such hospital and without the**  
 5        **consent of the patient, conduct such tests as are provided for in this Section.**

6                **C. The results of the test shall not become a part of the patient's medical**  
 7        **record and shall be confidential, except that the hospital may inform the**  
 8        **exposed employee, agent, or physician, or the infectious disease control officer**  
 9        **of the law enforcement, fire service, or emergency medical service agency of the**  
 10        **results of the test.**

11                **D. In the event that the test is performed, and the results of the test are**  
 12        **positive, the hospital shall inform the patient of the results and shall provide**  
 13        **such follow-up testing and counseling as may be required according to the**  
 14        **accepted standard of medical care.**

15                **E. The patient shall not be charged for any tests performed under this**  
 16        **Section.**

17                **F. Nothing herein shall be construed to require the hospital to perform**  
 18        **the test described herein.**

\* \* \*

20        §1299.58. Consent to surgical or medical treatment for developmentally disabled  
 21                persons and residents of state-operated nursing homes

\* \* \*

23                C. Consent given pursuant to this Section shall be in writing and shall comply  
 24        with the provisions of R.S. ~~40:1299.40(A)~~ **40:1299.39.5(A)**. A copy of the signed  
 25        written consent form and of the physician's written recommendation shall be placed  
 26        in the resident's permanent record.

\* \* \*

28        §1299.131. Consent to dental treatment

29                A. As used in this Part:

\* \* \*

(3) Notwithstanding the provisions of this Part, a dentist who performs oral or maxillofacial surgery in a hospital shall be subject to the provisions of R.S. ~~40:1299.40~~ **40:1299.35.5(A)**.

\* \* \*

§1300.11. Purpose; intent; insurance and R.S. ~~40:1299.40(D)~~ **40:1299.39.7** not affected

The legislature recognizes that confidentiality protection for information related to human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrome (AIDS) is an essential public health measure. In order to retain the full trust and confidence of persons at risk, the state has an interest both in assuring that HIV test results are not improperly disclosed and in having clear and certain rules for the disclosure of such information. By providing additional protection for the confidentiality of HIV test results, the legislature intends to encourage the expansion of voluntary confidential testing for HIV so that individuals may come forward, learn their health status, make decisions regarding the appropriate treatment, and change behaviors that put them and others at risk of infection. The legislature also recognizes that confidentiality protections can limit the risk of discrimination and the harm to an individual's interest in privacy that unauthorized disclosure of HIV test results can cause. It is not the intent of the legislature to create any new right, right of action, or cause of action or eliminate any right, right of action, or cause of action existing under current law. It is further not the intent of the legislature that this Chapter repeal, amend, or in any way affect the provisions of R.S. ~~40:1299.40(D)~~ **40:1299.39.7** relative to the ability of a physician or employee of a hospital who may become infected with the human immunodeficiency virus to test the blood of a patient without the patient's consent. It is the intent of the legislature that in the case of a person applying for or already insured under an insurance policy, who will be or has been the subject of a test to determine infection for human immunodeficiency virus (HIV), all facets of insurers'

1 practices in connection with HIV related testing and HIV test results and all facets  
2 of other entities' and individuals' interactions with insurers relating to HIV related  
3 testing or HIV test results shall be governed exclusively by Title 22 of the Revised  
4 Statutes of 1950 and any regulations promulgated pursuant thereto by the  
5 commissioner of the Department of Insurance who shall have the authority to  
6 promulgate such regulations.

7 Section 3. All existing medical disclosure lists duly promulgated by either a prior  
8 Louisiana Medical Disclosure Panel or the secretary of the Department of Health and  
9 Hospitals shall remain effective and shall be deemed to have been promulgated by the newly  
10 created Louisiana Medical Disclosure Panel until such time as those lists may be updated  
11 and repromulgated pursuant to the provisions of this Act.

12 Section 4. This Act shall become effective upon signature by the governor or, if not  
13 signed by the governor, upon expiration of the time for bills to become law without signature  
14 of the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
15 vetoed by the Governor and subsequently approved by the Legislature, this Act shall become  
16 effective on the day following such approval.

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The original instrument and the following digest, which constitute no part of  
the legislative instrument, were prepared by Christopher D. Adams.

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#### DIGEST

Present law provides the use of medical disclosure lists by health care providers as an acceptable method of obtaining informed consent.

Present law provides that the secretary of the Department of Health and Hospitals shall determine which risks and hazards related to medical care and surgical procedures must be disclosed by a physician or other health care provider to a patient or a person authorized to consent for a patient. Present law provides that the secretary of the Department of Health and Hospitals shall establish the general form and the substance of such disclosure. Present law further provides that the secretary of the Department of Health and Hospitals shall at least annually, or at such other period as the secretary may determine, identify and examine any new medical treatments and surgical procedures that have been developed and shall assign them to the proper disclosure list, establish the degree of disclosure required, and establish the form in which the disclosure shall be made.

Present law required the Norplant contraceptive device to be included in the uniform consent law. Proposed law removes this requirement.

Proposed law removes this duty from the secretary and places the duty into the newly created Louisiana Medical Disclosure Panel, which is made part of the Department of Health and Hospitals.

Proposed law provides for the following membership of the Louisiana Medical Disclosure Panel:

- (1) One member licensed to practice dentistry who specializes in oral and maxillofacial surgery who shall be selected from a list of nominees submitted to the governor by the Louisiana Society of Oral and Maxillofacial Surgeons.
- (2) Four members licensed to practice law in this state of whom three shall be selected from a list of nominees submitted to the governor by the Louisiana Association for Justice, and one shall be selected from a list of nominees submitted to the governor by the Louisiana Association of Defense Counsel.
- (3) Six members licensed to practice medicine in this state who shall be selected from a list of nominees submitted to the governor by the Louisiana State Medical Society.

Proposed law provides the initial members of the Louisiana Medical Disclosure Panel shall have the following terms:

- (1) The dentist who specializes in oral and maxillofacial surgery, one attorney, and two physicians shall serve a term of two years, or until a successor is appointed and qualified.
- (2) Two attorneys and two physicians shall serve a term of four years, or until a successor is appointed and qualified.
- (3) One attorney and two physicians shall serve a term of six years, or until a successor is appointed and qualified.
- (4) Thereafter, at the expiration of the term of each member of the panel, the governor shall appoint a successor and such successor shall serve for a term of six years, or until his successor is appointed and qualified.

Proposed law provides for the procedure for meetings, the filling of a vacancy, and for the removal of a member for failure to attend meetings.

Proposed law provides members of the panel shall not be entitled to per diem or any other compensation for their service, but shall be entitled to reimbursement of any necessary and reasonable expense incurred in the performance of their duties on the panel, including travel expenses.

Proposed law provides that the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and other health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

Proposed law provides that the dentist member of the panel shall only participate in the panel's deliberation, determination, and preparation of lists of dental treatments and procedures that do and do not require disclosure.

Proposed law provides for the procedure and content of the medical disclosure lists.

Proposed law provides that the lists shall be promulgated according to the Administrative Procedure Act.

Present law provides that the lists shall be admissible in a health care liability suit or medical malpractice claim involving medical care rendered or a surgical procedure performed. Present law further provides that in a suit against a physician or other health care provider involving a health care liability or medical malpractice claim which is based on the negligent

failure of the physician or other health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or other health care provider:

- (1) Both the disclosure made and the failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of informed consent have been complied with and this presumption shall be included in the charge to the jury; and
- (2) The failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure and this presumption shall be included in the charge to the jury, but failure to disclose may be found not to be negligent, if there was an emergency as defined in present law or; if for some other reason, it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

Proposed law retains present law.

Present law provides that in order to be covered by the provisions of present law, the physician or other health care provider who will actually perform the contemplated medical or surgical procedure shall:

- (1) Disclose the risks and hazards in the form and to the degree required by the panel.
- (2) Disclose additional risks, if any, particular to a patient because of a complicating medical condition, either told to the physician or other health care provider by the patient or his representative in a medical history of the patient or reasonably discoverable by such physician or other health care provider.
- (3) Disclose reasonable therapeutic alternatives and risks associated with such alternatives.
- (4) Relate that he is obtaining a consent to medical treatment pursuant to the lists formulated by the Louisiana Medical Disclosure Panel.
- (5) Provide an opportunity to ask any questions about the contemplated medical or surgical procedure, risks, or alternatives and acknowledge in writing that he answered such questions, to the patient or other person authorized to give consent to medical treatment, receipt of which shall be acknowledged in writing.

Proposed law requires the department to maintain a searchable database of all current medical disclosure lists that is available to the public through the department's website.

Proposed law retains present law.

Present law provides an exception to the requirement of obtaining informed consent and may conduct certain tests when it is determined by the hospital infection control committee or equivalent body that an agent or employee of a hospital, or a physician having privileges at the hospital, has been exposed to the blood or bodily fluids of a patient, in such a manner as to create any risk that the agent, employee, or physician may become infected with the human immunodeficiency virus or other infectious agent if the patient is infected with the human immunodeficiency virus or other infectious agent, in accordance with the infectious disease exposure guidelines of the Centers for Disease Control or the infectious disease exposure standards of the health care facility where the exposure occurred.

Proposed law retains present law but moves present law into its own statutory section.

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

(Amends R.S. 40:1299.39.5 through 1299.39.7, 1299.58(C), 1299.131(A)(3), and 1300.11;  
adds R.S. 36:259(MM))