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## DIGEST

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Abramson

HB No. 866

**Abstract:** Provides for methods of obtaining informed consent for medical treatment and creates the La. Medical Disclosure Panel.

Proposed law retains present law which allows the use of medical disclosure lists by health care providers as an acceptable method of obtaining informed consent for medical treatment.

Proposed law deletes present law providing special requirements which apply only to medical treatment involving implantation of "Norplant" contraceptive devices.

Present law provides that the secretary of the Department of Health and Hospitals (DHH) 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 person authorized to consent for a patient and to establish the general form and substance of such disclosure. Present law further requires the secretary of DHH, on at least an annual basis, to identify and examine any new treatments and procedures that have been developed, assign them to the proper disclosure list, and establish the degree of disclosure required and the form in which the disclosure shall be made. Proposed law revises present law to rescind these duties from the DHH secretary and assign them to the Louisiana Medical Disclosure Panel created by proposed law.

Proposed law provides that the Louisiana Medical Disclosure Panel created by proposed law shall be comprised of the following members:

- (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 Trial Lawyers Association and one shall be selected from a list of nominees submitted to the governor by the Louisiana Defense Counsel Association.
- (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 that the initial members of the 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 panel meetings, the filling of a vacancy on the panel, and for the removal of a panel member for failure to attend meetings.

Proposed law provides that 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 procedures relative to medical disclosure lists and the required content of such lists.

Proposed law provides that the medical disclosure lists shall be duly promulgated according to the provisions of the APA.

Proposed law retains present law which provides that the medical disclosure lists shall be admissible in a health care liability suit or medical malpractice claim involving medical care rendered or a surgical procedure performed.

Proposed law retains present law which 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 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 a disclosure 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 which 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 DHH to maintain a searchable database of all current medical disclosure lists and make such database available on the department's website.

Present law (R.S. 40:1299.40(D)(1)) provides an exception to the requirement of obtaining informed consent and permits a hospital infection control committee to conduct certain tests when it is determined 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 (HIV) or other infectious agent if the patient is infected with HIV 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 and relocates such provisions to a new Section of statute created by proposed law.

Proposed law provides that all existing medical disclosure lists duly promulgated by either a prior medical disclosure panel or the secretary of DHH shall remain effective and shall be deemed to have been promulgated by the Louisiana Medical Disclosure Panel created by proposed law until such time as those lists may be updated and repromulgated pursuant to the provisions of proposed law.

Proposed law makes technical corrections to present law to reflect new Sections of statute created by proposed law.

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

(Amends R.S. 40:1299.58(C), 1299.131(A)(3), and 1300.11; Adds R.S. 40:1299.39.5-1299.39.7; Repeals R.S. 40:1299.40)