

Regular Session, 2012

HOUSE BILL NO. 866

BY REPRESENTATIVE ABRAMSON

HEALTH CARE: Provides relative to informed consent for medical treatment and creates the La. Medical Disclosure Panel

1 AN ACT

2 To amend and reenact Part XXII of Chapter 5 of Title 40 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 40:1299.39.5 through 1299.39.7, and R.S.
4 40:1299.58(C), 1299.131(A)(3), and 1300.11, relative to consent to medical
5 treatment; to provide for methods by which informed consent may be obtained; to
6 provide for definitions; to create the Louisiana Medical Disclosure Panel; to provide
7 for membership, powers, and duties of such panel; to provide for attendance via
8 telecommunications; to provide for limitations on liability; to provide for medical
9 disclosure lists; to provide for exceptions to obtaining informed consent; to provide
10 for the promulgation of rules and regulations; to provide for an effective date; and
11 to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Part XXII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 40:1299.39.5 through 1299.39.7, and R.S. 40:1299.58(C),
15 1299.131(A)(3), and 1300.11 are hereby amended and reenacted to read as follows:

16 PART XXII. UNIFORM CONSENT LAW

17 ~~§1299.40~~ 1299.39.5. Consent to medical treatment; ~~exception; availability of lists~~
18 ~~to establish necessity and degree~~ methods of obtaining consent

19 A.~~(+)~~ Notwithstanding any other law to the contrary, written consent to
20 medical treatment means the voluntary permission of a patient, through signature,

1 marking, or affirmative action through electronic means pursuant to R.S.
2 40:1299.40.1, to any medical or surgical procedure or course of procedures which
3 sets forth in general terms the nature and purpose of the procedure or procedures,
4 together with the known risks, if any, of death, brain damage, quadriplegia,
5 paraplegia, the loss or loss of function of any organ or limb, of disfiguring scars
6 associated with such procedure or procedures; acknowledges that such disclosure of
7 information has been made and that all questions asked about the procedure or
8 procedures have been answered in a satisfactory manner; and is evidenced by a
9 signature, marking, or affirmative action through electronic means, by the patient for
10 whom the procedure is to be performed, or if the patient for any reason lacks legal
11 capacity to consent, by a person who has legal authority to consent on behalf of such
12 patient in such circumstances. Such consent shall be presumed to be valid and
13 effective, in the absence of proof that execution of the consent was induced by
14 misrepresentation of material facts.

15 ~~(2) In addition to the information required to be disclosed in Paragraph (1)~~
16 ~~of this Subsection, where the medical treatment involves the surgical implantation~~
17 ~~of "Norplant" contraceptive devices, the explanation to the patient shall include the~~
18 ~~known and significant or other material risks, the known adverse results, and~~
19 ~~alternative methods of contraception.~~

20 B. Except as provided in Subsection A of this Section, no evidence shall be
21 admissible to modify or limit the authorization for performance of the procedure or
22 procedures set forth in such consent.

23 C. Where consent to medical treatment from a patient, or from a person
24 authorized by law to consent to medical treatment for such patient, is secured other
25 than in accordance with Subsection A above, the explanation to the patient or to the
26 person consenting for such patient shall include the matters set forth in ~~Paragraph (1)~~
27 ~~of Subsection A above~~ Paragraph (A)(1) of this Section, and an opportunity shall be
28 afforded for asking questions concerning the procedures to be performed which shall

1 be answered in a satisfactory manner. Such consent shall be valid and effective and
2 is subject to proof according to the rules of evidence in ordinary cases.

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

20 ~~(2) Notwithstanding this Section or any other law to the contrary, whenever~~
21 ~~it is determined by the infectious disease control officer of any law enforcement, fire~~
22 ~~service, or emergency medical service agency or organization that an agent or~~
23 ~~employee of the agency or organization has been exposed to the blood or bodily~~
24 ~~fluids of a patient while rendering emergency medical services, transporting, or~~
25 ~~treating an ill or injured patient in such a manner as to create any risk that the agent~~
26 ~~or employee may become infected with the human immunodeficiency virus or other~~
27 ~~infectious agent if the patient is infected with the human immunodeficiency virus or~~
28 ~~other infectious agent, in accordance with the infectious disease exposure guidelines~~
29 ~~of the Centers for Disease Control or the infectious disease exposure standards of the~~

1 agency or organization, then the infectious disease control officer of the agency or
2 organization may present the facts to the infection control committee of the hospital
3 or other health care facility to which the patient has been transported. If the hospital
4 infection control committee agrees that there has been a potential exposure to the
5 agency or organization personnel, then the hospital infection control committee may,
6 while the patient is in such hospital and without the consent of the patient, conduct
7 such tests as are provided for in R.S. 40:1299.40(D)(1):

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

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

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

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

21 E.(1) ~~As used in this Subsection, "secretary" means the secretary of the~~
22 ~~Department of Health and Hospitals.~~

23 (2)(a) D. In a suit against a physician or other health care provider involving
24 a health care liability or medical malpractice claim which is based on the failure of
25 the physician or other health care provider to disclose or adequately to disclose the
26 risks and hazards involved in the medical care or surgical procedure rendered by the
27 physician or other health care provider, the only theory on which recovery may be
28 obtained is that of negligence in failing to disclose the risks or hazards that could

1 have influenced a reasonable person in making a decision to give or withhold
2 consent.

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

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

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

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

22 ~~(c) Lists prepared under Subparagraph (b) of this Paragraph together with~~
23 ~~written explanations of the degree and form of disclosure shall be promulgated~~
24 ~~according to the Administrative Procedure Act. The form of the disclosure and~~
25 ~~manner in which such disclosure will be made shall be subject to legislative~~
26 ~~oversight by the House and Senate health and welfare committees. The lists~~
27 ~~compiled and published and rules promulgated relative to the form and manner of~~
28 ~~disclosure according to the provisions of this Subsection and evidence of such~~
29 ~~disclosures or failure to disclose by a physician or other health care provider as~~

1 provided in Paragraphs (5) and (6) of this Subsection shall be admissible in a health
2 care liability suit or medical malpractice claim involving medical care rendered or
3 a surgical procedure performed on or after March 1, 1991.

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

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

20 (6) ~~Consent to medical care that appears on the secretary's list requiring~~
21 ~~disclosure shall be considered effective under this Subsection, if it is given by the~~
22 ~~patient or a person authorized to give the consent and by a competent witness, and~~
23 ~~if the consent specifically states, in such terms and language that a layman would be~~
24 ~~expected to understand, the risks and hazards that are involved in the medical care~~
25 ~~or surgical procedure in the form and to the degree required by the secretary under~~
26 ~~Paragraph (4) of this Subsection.~~

27 (7)(a) ~~In a suit against a physician or other health care provider involving a~~
28 ~~health care liability or medical malpractice claim which is based on the negligent~~
29 ~~failure of the physician or other health care provider to disclose or adequately to~~

1 ~~disclose the risks and hazards involved in the medical care or surgical procedure~~
2 ~~rendered by the physician or other health care provider:~~

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

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

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

22 ~~(c) In order to be covered by the provisions of this Subsection, the physician~~
23 ~~or other health care provider who will actually perform the contemplated medical or~~
24 ~~surgical procedure shall:~~

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

27 ~~(ii) Disclose additional risks, if any, particular to a patient because of a~~
28 ~~complicating medical condition, either told to the physician or other health care~~

1 provider by the patient or his representative in a medical history of the patient or
2 reasonably discoverable by such physician or other health care provider;

3 ~~(iii) Disclose reasonable therapeutic alternatives and risks associated with~~
4 ~~such alternatives;~~

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

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

11 F. Notwithstanding the provisions of Subsection E of this Section, consent
12 for dental treatment rendered by dentists not performing oral and maxillofacial
13 surgery in a hospital setting shall be governed exclusively by the provisions of R.S.
14 40:1299.131.

15 §1299.39.6. Louisiana Medical Disclosure Panel; creation; membership; powers;
16 duties

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

18 (1) "Panel" means the Louisiana Medical Disclosure Panel.

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

20 B.(1) The Louisiana Medical Disclosure Panel is hereby created within the
21 department to determine which risks and hazards related to medical care and surgical
22 procedures must be disclosed by a physician or other health care provider to a patient
23 or person authorized to consent for a patient and to establish the general form and
24 substance of such disclosure.

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

27 (a) Two members licensed to practice dentistry. One member who
28 specializes in oral and maxillofacial surgery who shall be selected from a list of
29 nominees submitted to the governor by the Louisiana Society of Oral and

1 Maxillofacial Surgeons. The other member shall be selected from a list of nominees
2 submitted to the governor by the Louisiana Dental Association.

3 (b) Four members licensed to practice law in this state of whom three shall
4 be selected from a list of nominees submitted to the governor by the Louisiana
5 Association of Justice and one shall be selected from a list of nominees submitted
6 to the governor by the Louisiana Defense Counsel Association.

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

10 (d) One member licensed to practice chiropractic in this state who shall be
11 selected from a list of nominees submitted to the governor by the Chiropractic
12 Association of Louisiana.

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

14 (1) The dentist who specializes in oral and maxillofacial surgery, the
15 chiropractic physician, one attorney, and two physicians shall serve a term of two
16 years, or until a successor is appointed and qualified.

17 (2) Two attorneys, two physicians, and one dentist shall serve a term of four
18 years, or until a successor is appointed and qualified.

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

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

24 D. Any member of the panel who is absent for three consecutive meetings
25 without the consent of a majority of the panel at each such meeting may be removed
26 by the governor at the request of the panel present submitted in writing and signed
27 by the chairman. Upon the death, resignation, or removal of any member, the
28 governor shall fill the vacancy by selection for the unexpired portion of the term.

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

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

7 G. At the first meeting of the panel each year after its members assume their
8 positions, the panelists shall select one of the panel members to serve as chairman
9 and one of the panel members to serve as vice chairman, and each such officer shall
10 serve for a term of one year. The chairman shall preside at meetings of the panel,
11 and in his absence, the vice chairman shall preside.

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

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

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

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

1 (3) Lists prepared pursuant to the provisions of this Section together with
2 written explanations of the degree and form of disclosure shall be promulgated in
3 accordance with the provisions of the Administrative Procedure Act. The form of
4 the disclosure and manner in which such disclosure will be made shall be subject to
5 legislative oversight by the House and Senate health and welfare committees.

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

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

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

28 N. Consent to medical care that appears on the panel's list requiring
29 disclosure shall be considered effective pursuant to the provisions of this Subsection,

1 if it is given in writing, signed by the patient or a person authorized to give the
2 consent and by a competent witness, and if the written consent specifically states, in
3 such terms and language that a layman would be expected to understand, the risks
4 and hazards that are involved in the medical care or surgical procedure in the form
5 and to the degree required by the panel pursuant to the provisions of this Section.

6 O.(1) All the following requirements shall apply in a suit against a physician
7 or other health care provider involving a health care liability or medical malpractice
8 claim which is based on the negligent failure of the physician or other health care
9 provider to disclose or adequately to disclose the risks and hazards involved in the
10 medical care or surgical procedure rendered by the physician or other health care
11 provider:

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

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

27 (2) If medical care is rendered or a surgical procedure performed with
28 respect to which the panel has not made a determination regarding a duty of

1 disclosure, the physician or other health care provider is under the general duty to
2 disclose otherwise imposed by R.S. 40:1299.39.5.

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

6 (1) Disclose the risks and hazards in the form and to the degree required by
7 the panel.

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

12 (3) Disclose reasonable therapeutic alternatives and risks associated with
13 such alternatives.

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

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

20 Q. The department shall maintain a searchable database of all current
21 medical disclosure lists and make such database available to the public on the
22 website of the department.

23 R. Notwithstanding the provisions of the Open Meetings Law, R.S. 42:11 et
24 seq., or any other law, if any member of the panel is physically present at a meeting,
25 any number of the other members of the panel may attend the meeting by use of
26 telephone conference call, videoconferencing, or other similar telecommunication
27 methods for purposes of establishing a quorum or voting or for any other meeting
28 purpose allowing a panel member to fully participate in any panel meeting. The
29 provisions of this Subsection shall apply without regard to the subject matter

1 discussed or considered by the panel at the meeting. A meeting held by telephone
2 conference call, videoconferencing, or other similar telecommunication method:

3 (1) Shall be subject to the notice requirements of R.S. 42:11 et seq.

4 (2) Shall not be held unless the notice of the meeting specifies the location
5 of the meeting at which a member of the panel will be physically present.

6 (3) Shall be open to the public and audible to the public at the location
7 specified in the notice.

8 (4) Shall provide two-way audio communication between all panel members
9 attending the meeting during the entire meeting, and, if the two-way audio
10 communication link with any member attending the meeting is disrupted at any time,
11 the meeting may not continue until the two-way audio communication link is
12 reestablished.

13 S. The Department of Health and Hospitals, its agents or employees, or any
14 person serving as a member of the panel shall not be liable to any person, firm or
15 entity, public or private, for any act or omission to act arising out of a health care
16 provider attempting to obtain or obtaining informed consent pursuant to the
17 provisions of this Section.

18 §1299.39.7. Exception to obtaining informed consent; human immunodeficiency
19 virus or other infectious agents

20 A. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law to
21 the contrary, whenever it is determined by the hospital infection control committee
22 or equivalent body that an agent or employee of a hospital, or a physician having
23 privileges at the hospital, has been exposed to the blood or bodily fluids of a patient,
24 in such a manner as to create any risk that the agent, employee, or physician may
25 become infected with the human immunodeficiency virus or other infectious agent
26 if the patient is infected with the human immunodeficiency virus or other infectious
27 agent, in accordance with the infectious disease exposure guidelines of the Centers
28 for Disease Control or the infectious disease exposure standards of the health care
29 facility where the exposure occurred, then the hospital infection control committee

1 may, without the consent of the patient, conduct such tests on blood previously
2 drawn or body fluids previously collected as are necessary to determine whether the
3 patient is, in fact, infected with the virus or other agent believed to cause acquired
4 immune deficiency syndrome or other infectious disease. If no previously drawn
5 blood or collected bodily fluids are available or are suitable, the hospital may order,
6 without the consent of the patient, that blood, bodily fluids, or both be drawn and
7 collected from the patient to conduct the necessary tests.

8 B. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law to
9 the contrary, whenever it is determined by the infectious disease control officer of
10 any law enforcement, fire service, or emergency medical service agency or
11 organization that an agent or employee of the agency or organization has been
12 exposed to the blood or bodily fluids of a patient while rendering emergency medical
13 services, transporting, or treating an ill or injured patient in such a manner as to
14 create any risk that the agent or employee may become infected with the human
15 immunodeficiency virus or other infectious agent if the patient is infected with the
16 human immunodeficiency virus or other infectious agent, in accordance with the
17 infectious disease exposure guidelines of the Centers for Disease Control or the
18 infectious disease exposure standards of the agency or organization, then the
19 infectious disease control officer of the agency or organization may present the facts
20 to the infection control committee of the hospital or other health care facility to
21 which the patient has been transported. If the hospital infection control committee
22 agrees that there has been a potential exposure to the agency or organization
23 personnel, then the hospital infection control committee may, while the patient is in
24 such hospital and without the consent of the patient, conduct such tests as are
25 provided for in this Section.

26 C. The results of the test shall not become a part of the patient's medical
27 record and shall be confidential, except that the hospital may inform the exposed
28 employee, agent, or physician, or the infectious disease control officer of the law

1 enforcement, fire service, or emergency medical service agency of the results of the
2 test.

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

7 E. The patient shall not be charged for any tests performed pursuant to the
8 provisions of this Section.

9 F. Nothing in this Part shall be construed to require the hospital to perform
10 the test described herein.

11 * * *

12 §1299.58. Consent to surgical or medical treatment for developmentally disabled
13 persons and residents of state-operated nursing homes

14 * * *

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

19 * * *

20 §1299.131. Consent to dental treatment

21 A. As used in this Part:

22 * * *

23 (3) Notwithstanding the provisions of this Part, a dentist who performs oral
24 or maxillofacial surgery in a hospital shall be subject to the provisions of R.S.
25 ~~40:1299.40~~ 40:1299.39.5.

26 * * *

1 §1300.11. Purpose; intent; insurance and R.S. ~~40:1299.40(D)~~ 40:1299.39.7 not
2 affected

3 The legislature recognizes that confidentiality protection for information
4 related to human immunodeficiency virus (HIV) infection and acquired
5 immunodeficiency syndrome (AIDS) is an essential public health measure. In order
6 to retain the full trust and confidence of persons at risk, the state has an interest both
7 in assuring that HIV test results are not improperly disclosed and in having clear and
8 certain rules for the disclosure of such information. By providing additional
9 protection for the confidentiality of HIV test results, the legislature intends to
10 encourage the expansion of voluntary confidential testing for HIV so that individuals
11 may come forward, learn their health status, make decisions regarding the
12 appropriate treatment, and change behaviors that put them and others at risk of
13 infection. The legislature also recognizes that confidentiality protections can limit
14 the risk of discrimination and the harm to an individual's interest in privacy that
15 unauthorized disclosure of HIV test results can cause. It is not the intent of the
16 legislature to create any new right, right of action, or cause of action or eliminate any
17 right, right of action, or cause of action existing under current law. It is further not
18 the intent of the legislature that this Chapter repeal, amend, or in any way affect the
19 provisions of R.S. ~~40:1299.40(D)~~ 40:1299.39.7 relative to the ability of a physician
20 or employee of a hospital who may become infected with the human
21 immunodeficiency virus to test the blood of a patient without the patient's consent.
22 It is the intent of the legislature that in the case of a person applying for or already
23 insured under an insurance policy, who will be or has been the subject of a test to
24 determine infection for human immunodeficiency virus (HIV), all facets of insurers'
25 practices in connection with HIV related testing and HIV test results and all facets
26 of other entities' and individuals' interactions with insurers relating to HIV related
27 testing or HIV test results shall be governed exclusively by Title 22 of the Louisiana
28 Revised Statutes of 1950 and any regulations promulgated pursuant thereto by the

1 commissioner of the Department of Insurance who shall have the authority to
2 promulgate such regulations.

3 Section 2. All existing medical disclosure lists duly promulgated by either a prior
4 Louisiana Medical Disclosure Panel or the secretary of the Department of Health and
5 Hospitals shall remain effective and shall be deemed to have been promulgated by the newly
6 created Louisiana Medical Disclosure Panel until such time as those lists may be updated
7 and repromulgated pursuant to the provisions of this Act.

8 Section 3. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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 Dept. 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 La. Medical Disclosure Panel created by proposed law.

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

- (1) Two members licensed to practice dentistry. One member who specializes in oral and maxillofacial surgery who shall be selected from a list of nominees submitted to the governor by the La. Society of Oral and Maxillofacial Surgeons. The other member shall be selected from a list of nominees submitted to the governor by the La. Dental Association.
- (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 La. Trial Lawyers Association and one shall be selected from a list of nominees submitted to the governor by the La. 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 La. State Medical Society.
- (4) One member licensed to practice chiropractic in this state who shall be selected from a list of nominees submitted to the governor by the Chiropractic Association of La..

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, the chiropractic physician, one attorney, and two physicians shall serve a term of two years, or until a successor is appointed and qualified.
- (2) Two attorneys, two physicians, and one dentist 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 La. 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.

Proposed law authorizes participation in meetings by telephone conference call, videoconferencing, or other similar telecommunication methods if at least one member is physically present at a meeting, and provides that if a meeting is held via telecommunications, the Open Meeting Law provisions of R.S. 42:11 et seq. apply.

Proposed law limits liability of the department, its agents or employees resulting from a health care provider attempting to obtain or obtaining informed consent.

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 La. 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. 40:1299.39.5-1299.39.7, 1299.58(C), 1299.131(A)(3), and 1300.11)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added a dentist and chiropractic physician to the panel.
2. Authorized participation in meetings by telephone conference call, videoconferencing, or other similar telecommunication methods if at least one member is physically present at a meeting, and provides that if a meeting is held via telecommunications, the Open Meeting Law requirements shall apply.
3. Limited liability of the department, its agents, or employees resulting from a health care provider attempting to obtain or obtaining informed consent.