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DIGEST

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Murray

SB No. 239

Present law provides for the transfer of agencies and functions to DHH.

Proposed law retains present law and adds 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. 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 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.
- (5) One member licensed to practice podiatry in the state who shall be selected from a list of nominees submitted to the governor by the Louisiana Podiatric Medical Association.
- (6) One member licensed to practice optometry in this state who shall be selected from a list of nominees submitted to the governor by the Optometry Association of Louisiana.
- (7) One member licensed as a nurse practitioner in this state who shall be selected from a list of nominees submitted to the governor by the Louisiana Association of Nurse Practitioners.

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, the podiatrist, the optometrist, the nurse practitioner, 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.
- (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 Meetings 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.

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

(Amends R.S. 36:802(intro. para.) and R.S. 40:1299.39.5-1299.39.7, 1299.58(C), 1299.131(A)(3), and 1300.11; Adds R.S. 36:259(MM))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Adds a second dentist, a general chiropractic physician, a podiatrist, and an optometrist to the panel.

2. Provides an exception to the open meetings law.
3. Provides a limitation of liability to DHH.

Senate Floor Amendments to engrossed bill

1. Technical corrections made.

Summary of Amendments Adopted by House

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

1. Provided for transfer and retention of policymaking and rule-making functions of the La. Medical Disclosure Panel to DHH.
2. Added a licensed nurse practitioner as a member of the panel.
3. Provided for approval of a replacement member by the House Committee on Civil Law and Procedure, and deleted the requirement that the chairman submit a written request to remove a member who is absent for three consecutive meetings.