

**CONFERENCE COMMITTEE REPORT**  
**Senate Bill No. 239 By Senator Murray**

June 3, 2012

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 239 by Senator Murray, recommend the following concerning the Reengrossed bill:

1. That the House Committee on Civil Law and Procedure amendments Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11 and 12, adopted by the House of Representatives on May 23, 2012 be adopted.
2. That the House Committee on Civil Law and Procedure amendment No.8, adopted by the House of Representatives on May 23, 2012 be rejected.
3. That the House Legislative Bureau Amendment Nos. 1 and 2, adopted by the House of Representatives on May 23, 2012 be adopted.
4. That House Floor amendment No. 1, proposed by Representative Abramson and adopted by the House of Representatives on May 31, 2012 be rejected.

Respectfully submitted,

Senators:

Representatives:

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Senator Edwin R. Murray

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Representative Neil C. Abramson

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Senator Fred Mills

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Representative Alan T. Seabaugh

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Senator David Heitmeier

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Representative Jeffery "Jeff" J. Arnold

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The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by James Benton.

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## CONFERENCE COMMITTEE REPORT DIGEST

Senate Bill No. 239 by Senator Murray

### **Keyword and summary of the bill as proposed by the Conference Committee**

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

### **Report adopts House amendments to:**

1. Specify the body of law from which the panel shall receive its powers, duties, functions and responsibilities.
2. Add to the panel members a licensed 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.
2. Provide for the term of office for a nurse practitioner.
3. Remove requirement that request by the panel to remove a member for missing three consecutive meetings be in writing, signed by the chairman, and approved by the panel.

### **Report rejects House amendments which would have:**

1. Allowed the House and Senate Committees on Civil Law and Procedure to be included in the confirmation process, with the Senate, for panel members who have died, resigned, or have been removed.
2. Allowed the Senate Committee on Health and Welfare to be included in the confirmation process, with the Senate, for panel members who have died, resigned, or have been removed

### **Report amends the bill to:**

### **Digest of the bill as proposed by the Conference Committee**

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. 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 Louisiana Society of Oral and Maxillofacial Surgeons. The other member shall be selected from a list of nominees submitted to the governor by the Louisiana 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 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. One of the six physicians shall be hospital-employed.
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 Louisiana.
5. One member licensed to practice podiatry in this 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 the initial members of the Louisiana Medical Disclosure Panel shall have the following terms:

1. The dentist who specializes in oral and maxillofacial surgery, the chiropractic physician, the podiatrist, the optometrist, one attorney, the nurse practitioner 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 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 a 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 participate only 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.

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 retains present law.

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 provides an exception to the open meetings laws whereby if any member of the panel is physically present at a meeting, any number of the other members of the panel may attend the meeting by use of telephone conference call, videoconferencing, or other

similar telecommunication methods for purposes of establishing a quorum or voting or for any other meeting purpose allowing a panel member to fully participate in any panel meeting. The proposed law shall apply without regard to the subject matter discussed or considered by the panel at the meeting. A meeting held by telephone conference call, videoconferencing, or other similar telecommunication method:

1. Shall be subject to the notice requirements of present law.
2. Shall not be held unless the notice of the meeting specifies the location of the meeting at which a member of the panel will be physically present.
3. Shall be open to the public and audible to the public at the location specified in the notice.
4. Shall provide two-way audio communication between all panel members attending the meeting during the entire meeting, and if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting may not continue until the two-way audio communication link is reestablished.

Proposed law provides the Department of Health and Hospitals, its agents or employees, or any person serving as a member of the panel shall not be liable to any person, firm or entity, public or private, for any act or omission arising out of a health care provider attempting to obtain or obtaining informed consent pursuant to the provisions of the proposed 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. 36:802 (intro para) and 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); and repeals R.S. 40:1299.40)