

SENATE BILL NO. 239

BY SENATOR MURRAY

1 AN ACT

2 To amend and reenact R.S. 36:802(introductory paragraph), and Part XXII of Chapter 5 of  
3 Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.  
4 40:1299.39.5 through 1299.39.7, 1299.58(C), 1299.131(A)(3), and 1300.11, to enact  
5 R.S. 36:259(MM), and to repeal R.S. 40:1299.40, relative to informed consent; to  
6 provide for methods in which informed consent may be obtained; to create the  
7 Louisiana Medical Disclosure Panel within the Department of Health and Hospitals;  
8 to provide for definitions; to provide for membership and terms; to provide for  
9 powers and duties; to provide for medical disclosure lists; to provide for exceptions  
10 to obtaining informed consent; to provide for attendance of meetings via  
11 telecommunications; to provide for limitations of liability; to provide for the  
12 promulgation of rules and regulations; to provide for an effective date; and to  
13 provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 36:802(introductory paragraph) is hereby amended and reenacted and  
16 R.S. 36:259(MM) is hereby enacted to read as follows:

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

18 \* \* \*

19 **MM. The Louisiana Medical Disclosure Panel (R.S. 40:1299.39.6) is**  
20 **placed within the Department of Health and Hospitals and shall exercise and**  
21 **perform its powers, duties, functions, and responsibilities as provided for**  
22 **agencies transferred in accordance with the provisions of R.S. 36:802.**

23 \* \* \*

24 §802. Transfer; retention of policymaking and rulemaking functions

25 The agencies transferred by the provisions of R.S. 36:209(Q), 239(E),  
26 259(B), 259(T), **259(MM)**, 309(B), 359(B), 409(C), 459(B), 509(B), 610(B), 629(I),  
27 and 769(C) shall continue to be composed and selected as provided by law, and each

1 shall continue to exercise all of the powers, duties, functions, and responsibilities  
 2 provided or authorized for each by the constitution or laws which are in the nature  
 3 of policymaking, rulemaking, licensing, regulation, enforcement, or adjudication and  
 4 also shall continue to exercise all advisory powers, duties, functions, and  
 5 responsibilities provided by law. Such powers, duties, functions, and responsibilities  
 6 shall be exercised independently of the secretary and any assistant secretary, except  
 7 that:

8 \* \* \*

9 Section 2. Part XXII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of  
 10 1950, comprised of R.S. 40:1299.39.5 through 1299.39.7, 1299.58(C), 1299.131(A)(3), and  
 11 1300.11 are hereby amended and reenacted to read as follows:

12 PART XXII. UNIFORM CONSENT LAW

13 ~~§1299.40.~~ **§1299.39.5.** Consent to medical treatment; ~~exception; availability of lists~~  
 14 ~~to establish necessity and degree~~ **methods of obtaining consent**

15 A. ~~(†)~~ Notwithstanding any other law to the contrary, written consent to  
 16 medical treatment means the voluntary permission of a patient, through signature,  
 17 marking, or affirmative action through electronic means pursuant to R.S.  
 18 40:1299.40.1, to any medical or surgical procedure or course of procedures which  
 19 sets forth in general terms the nature and purpose of the procedure or procedures,  
 20 together with the known risks, if any, of death, brain damage, quadriplegia,  
 21 paraplegia, the loss or loss of function of any organ or limb, of disfiguring scars  
 22 associated with such procedure or procedures; acknowledges that such disclosure of  
 23 information has been made and that all questions asked about the procedure or  
 24 procedures have been answered in a satisfactory manner; and is evidenced by a  
 25 signature, marking, or affirmative action through electronic means, by the patient for  
 26 whom the procedure is to be performed, or if the patient for any reason lacks legal  
 27 capacity to consent, by a person who has legal authority to consent on behalf of such  
 28 patient in such circumstances. Such consent shall be presumed to be valid and  
 29 effective, in the absence of proof that execution of the consent was induced by  
 30 misrepresentation of material facts.

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

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

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

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

1           bodily fluids are available or are suitable, the hospital may order, without the consent  
2           of the patient, that blood, bodily fluids, or both be drawn and collected from the  
3           patient to conduct the necessary tests.

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

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

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

30                   (5) ~~The patient shall not be charged for any tests performed under this~~

1           Subsection:

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

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

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

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

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

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

29                     ~~(b) The secretary shall prepare separate lists of those medical treatments and~~  
30          ~~surgical procedures that do and do not require disclosure and for those treatments~~

1 and procedures that do require disclosure shall establish the degree of disclosure  
2 required and the form in which the disclosure will be made.

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

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

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

30 (6) Consent to medical care that appears on the secretary's list requiring

1 disclosure shall be considered effective under this Subsection, if it is given by the  
 2 patient or a person authorized to give the consent and by a competent witness, and  
 3 if the consent specifically states, in such terms and language that a layman would be  
 4 expected to understand, the risks and hazards that are involved in the medical care  
 5 or surgical procedure in the form and to the degree required by the secretary under  
 6 Paragraph (4) of this Subsection.

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

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

18 (ii) The failure to disclose the risks and hazards involved in any medical care  
 19 or surgical procedure required to be disclosed under Paragraphs (5) and (6) of this  
 20 Subsection shall be admissible in evidence and shall create a rebuttable presumption  
 21 of a negligent failure to conform to the duty of disclosure set forth in Paragraphs (5)  
 22 and (6) of this Subsection, 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 (b) If medical care is rendered or a surgical procedure performed with respect  
 28 to which the secretary has not made a determination regarding a duty of disclosure,  
 29 the physician or other health care provider is under the general duty to disclose  
 30 otherwise imposed by this Section.

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

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

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

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

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

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

18                  F. Notwithstanding the provisions of Subsection E of this Section, consent  
19                  for dental treatment rendered by dentists not performing oral and maxillofacial  
20                  surgery in a hospital setting shall be governed exclusively by the provisions of R.S.  
21                  40:1299.131.

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

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

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

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

27                  **B.(1) The Louisiana Medical Disclosure Panel is hereby created within**  
28                  **the department to determine which risks and hazards related to medical care**  
29                  **and surgical procedures must be disclosed by a physician or other health care**  
30                  **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) Two members licensed to practice dentistry. One member who  
5 specializes in oral and maxillofacial surgery shall be selected from a list of  
6 nominees submitted to the governor by the Louisiana Society of Oral and  
7 Maxillofacial Surgeons. The other member shall be selected from a list of  
8 nominees submitted to the governor by the Louisiana Dental Association.

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

14 (c) Six members licensed to practice medicine in this state who shall be  
15 selected from a list of nominees submitted to the governor by the Louisiana  
16 State Medical Society. One of the six physicians shall be a hospital-employed  
17 physician.

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

21 (e) One member licensed to practice podiatry in this state who shall be  
22 selected from a list of nominees submitted to the governor by the Louisiana  
23 Podiatric Medical Association.

24 (f) One member licensed to practice optometry in this state who shall be  
25 selected from a list of nominees submitted to the governor by the Optometry  
26 Association of Louisiana.

27 (g) One member licensed as a nurse practitioner in this state who shall  
28 be selected from a list of nominees submitted to the governor by the Louisiana  
29 Association of Nurse Practitioners.

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

1           (1) The dentist who specializes in oral and maxillofacial surgery, the  
2           chiropractic physician, the podiatrist, the optometrist, one attorney, the nurse  
3           practitioner, and two physicians shall each serve a term of two years, or until  
4           a successor is appointed and qualified.

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

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

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

12          D. Any member of the panel who is absent for three consecutive meetings  
13          without the consent of a majority of the panel at each such meeting may be  
14          removed by the governor at the request of the panel. Upon the death,  
15          resignation, or removal of any member, the secretary of the department shall  
16          fill the vacancy by selection, subject to Senate confirmation, for the unexpired  
17          portion of the term.

18          E. Members of the panel shall not be entitled to a per diem or any other  
19          compensation for their service but shall be entitled to reimbursement of any  
20          necessary and reasonable expense incurred in the performance of their duties  
21          on the panel, including travel expenses.

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

24          G. At the first meeting of the panel each year after its members assume  
25          their positions, the panelists shall select one of the panel members to serve as  
26          chairman and one of the panel members to serve as vice chairman, and each  
27          such officer shall serve for a term of one year. The chairman shall preside at  
28          meetings of the panel, and in his absence, the vice chairman shall preside.

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

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

4            J.(1) To the extent feasible, the panel shall identify and make a thorough  
5 examination of all medical treatments and surgical procedures in which  
6 physicians and other health care providers may be involved in order to  
7 determine which of those treatments and procedures do and do not require  
8 disclosure of the risks and hazards to the patient or person authorized to  
9 consent for the patient. Initially, the panel shall examine all existing medical  
10 disclosure lists and update and repromulgate those lists under the authority  
11 vested in this Section. The dentist member of the panel shall participate only  
12 in the panel's deliberation, determination, and preparation of lists of dental  
13 treatments and procedures that do and do not require disclosure.

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

18            (3) Lists prepared under this Section, together with the written  
19 explanations of the degree and form of disclosure, shall be promulgated in  
20 accordance with the Administrative Procedure Act. The form of the disclosure  
21 and manner in which such disclosure shall be made shall be subject to  
22 legislative oversight by the House and Senate health and welfare committees.

23            K. The lists compiled and published and rules promulgated relative to  
24 the form and manner of disclosure according to the provisions of this Section  
25 and evidence of such disclosures or failure to disclose by a physician or other  
26 health care provider as provided in this Section shall be admissible in a health  
27 care liability suit or medical malpractice claim involving medical care rendered  
28 or a surgical procedure performed.

29            L. At least annually or at such other time period as the panel may  
30 determine, the panel shall identify and examine any new medical treatments

1 and surgical procedures that have been developed since its last determinations,  
2 assign them to the proper list, establish the degree of disclosure required, and  
3 the form in which the disclosure shall be made. The panel shall review and  
4 examine such treatments and procedures for the purpose of revising lists  
5 previously published. These determinations shall be published in the same  
6 manner as described in Paragraph (J)(3) of this Section.

7 M. Before a patient or a person authorized to consent for a patient gives  
8 consent to any medical or surgical procedure that appears on the panel's list  
9 requiring disclosure, the physician or other health care provider shall disclose  
10 to the patient or a person authorized to consent for the patient the risks and  
11 hazards involved in that kind of care or procedure. A physician or other health  
12 care provider may choose to utilize the lists prepared by the panel and shall be  
13 considered to have complied with the requirements of this Subsection if  
14 disclosure is made as provided in Subsection N of this Section.

15 N. Consent to medical care that appears on the panel's list requiring  
16 disclosure shall be considered effective under this Subsection if it is given in  
17 writing, signed by the patient or a person authorized to give the consent and by  
18 a competent witness, and written in such terms and language that a layman  
19 would be expected to understand, if the written consent specifically so requires,  
20 the risks and hazards that are involved in the medical care or surgical  
21 procedure in the form and to the degree required by the panel under this  
22 Section.

23 O.(1) All the following requirements shall apply in a suit against a  
24 physician or other health care provider involving a health care liability or  
25 medical malpractice claim which is based on the negligent failure of the  
26 physician or other health care provider to disclose or adequately to disclose the  
27 risks and hazards involved in the medical care or surgical procedure rendered  
28 by the physician or other health care provider:

29 (a) Both the disclosure made as provided in Subsection M of this Section  
30 and the failure to disclose based on inclusion of any medical care or surgical

1 procedure on the panel's list for which disclosure is not required shall be  
2 admissible in evidence and shall create a rebuttable presumption that the  
3 requirements of Subsections M and N of this Section have been complied with,  
4 and this presumption shall be included in the charge to the jury.

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

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

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

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

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

27 (3) Disclose reasonable therapeutic alternatives and risks associated with  
28 such alternatives.

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

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

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

9           **R. Notwithstanding the provisions of the Open Meetings Law, R.S. 42:11**  
10           **et seq., or any other law to the contrary, if any member of the panel is physically**  
11           **present at a meeting, any number of the other members of the panel may attend**  
12           **the meeting by use of telephone conference call, videoconferencing, or other**  
13           **similar telecommunication methods for purposes of establishing a quorum or**  
14           **voting or for any other meeting purpose allowing a panel member to fully**  
15           **participate in any panel meeting. The provisions of this Subsection shall apply**  
16           **without regard to the subject matter discussed or considered by the panel at the**  
17           **meeting. A meeting held by telephone conference call, videoconferencing, or**  
18           **other similar telecommunication method:**

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

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

22                   **(3) Shall be open to the public and audible to the public at the location**  
23                   **specified in the notice.**

24                   **(4) Shall provide two-way audio communication between all panel**  
25                   **members attending the meeting during the entire meeting, and if the two-way**  
26                   **audio communication link with any member attending the meeting is disrupted**  
27                   **at any time, the meeting may not continue until the two-way audio**  
28                   **communication link is reestablished.**

29           **S. The Department of Health and Hospitals, its agents or employees, or**  
30           **any person serving as a member of the panel shall not be liable to any person,**

1 firm or entity, public or private, for any act or omission arising out of a health  
2 care provider attempting to obtain or obtaining informed consent pursuant to  
3 the provisions of this Section.

4 §1299.39.7. Exception to obtaining informed consent; human immunodeficiency  
5 virus or other infectious agents

6 A. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law  
7 to the contrary, whenever it is determined by the hospital infection control  
8 committee or equivalent body that an agent or employee of a hospital, or a  
9 physician having privileges at the hospital, has been exposed to the blood or  
10 bodily fluids of a patient, in such a manner as to create any risk that the agent,  
11 employee, or physician may become infected with the human immunodeficiency  
12 virus or other infectious agent if the patient is infected with the human  
13 immunodeficiency virus or other infectious agent, in accordance with the  
14 infectious disease exposure guidelines of the Centers for Disease Control or the  
15 infectious disease exposure standards of the health care facility where the  
16 exposure occurred, then the hospital infection control committee may, without  
17 the consent of the patient, conduct such tests on blood previously drawn or  
18 bodily fluids previously collected as are necessary to determine whether the  
19 patient is, in fact, infected with the virus or other agent believed to cause  
20 acquired immune deficiency syndrome or other infectious disease. If no  
21 previously drawn blood or collected bodily fluids are available or are suitable,  
22 the hospital may order, without the consent of the patient, that blood, bodily  
23 fluids, or both be drawn and collected from the patient to conduct the necessary  
24 tests.

25 B. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law  
26 to the contrary, whenever it is determined by the infectious disease control  
27 officer of any law enforcement, fire service, or emergency medical service  
28 agency or organization that an agent or employee of the agency or organization  
29 has been exposed to the blood or bodily fluids of a patient while rendering  
30 emergency medical services, transporting, or treating an ill or injured patient

1 in such a manner as to create any risk that the agent or employee may become  
 2 infected with the human immunodeficiency virus or other infectious agent if the  
 3 patient is infected with the human immunodeficiency virus or other infectious  
 4 agent, in accordance with the infectious disease exposure guidelines of the  
 5 Centers for Disease Control or the infectious disease exposure standards of the  
 6 agency or organization, then the infectious disease control officer of the agency  
 7 or organization may present the facts to the infection control committee of the  
 8 hospital or other health care facility to which the patient has been transported.  
 9 If the hospital infection control committee agrees that there has been a potential  
 10 exposure to the agency or organization personnel, then the hospital infection  
 11 control committee may, while the patient is in such hospital and without the  
 12 consent of the patient, conduct such tests as are provided for in this Section.

13 C. The results of the test shall not become a part of the patient's medical  
 14 record and shall be confidential, except that the hospital may inform the  
 15 exposed employee, agent, or physician, or the infectious disease control officer  
 16 of the law enforcement, fire service, or emergency medical service agency of the  
 17 results of the test.

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

22 E. The patient shall not be charged for any tests performed under this  
 23 Section.

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

26 \* \* \*

27 §1299.58. Consent to surgical or medical treatment for developmentally disabled  
 28 persons and residents of state-operated nursing homes

29 \* \* \*

30 C. Consent given pursuant to this Section shall be in writing and shall comply

1 with the provisions of R.S. ~~40:1299.40(A)~~ **40:1299.39.5(A)**. A copy of the signed  
2 written consent form and of the physician's written recommendation shall be placed  
3 in the resident's permanent record.

4 \* \* \*

5 §1299.131. Consent to dental treatment

6 A. As used in this Part:

7 \* \* \*

8 (3) Notwithstanding the provisions of this Part, a dentist who performs oral  
9 or maxillofacial surgery in a hospital shall be subject to the provisions of R.S.  
10 ~~40:1299.40~~ **40:1299.39.5(A)**.

11 \* \* \*

12 §1300.11. Purpose; intent; insurance and R.S. ~~40:1299.40(D)~~ **40:1299.39.7** not  
13 affected

14 The legislature recognizes that confidentiality protection for information  
15 related to human immunodeficiency virus (HIV) infection and acquired  
16 immunodeficiency syndrome (AIDS) is an essential public health measure. In order  
17 to retain the full trust and confidence of persons at risk, the state has an interest both  
18 in assuring that HIV test results are not improperly disclosed and in having clear and  
19 certain rules for the disclosure of such information. By providing additional  
20 protection for the confidentiality of HIV test results, the legislature intends to  
21 encourage the expansion of voluntary confidential testing for HIV so that individuals  
22 may come forward, learn their health status, make decisions regarding the  
23 appropriate treatment, and change behaviors that put them and others at risk of  
24 infection. The legislature also recognizes that confidentiality protections can limit  
25 the risk of discrimination and the harm to an individual's interest in privacy that  
26 unauthorized disclosure of HIV test results can cause. It is not the intent of the  
27 legislature to create any new right, right of action, or cause of action or eliminate any  
28 right, right of action, or cause of action existing under current law. It is further not  
29 the intent of the legislature that this Chapter repeal, amend, or in any way affect the  
30 provisions of R.S. ~~40:1299.40(D)~~ **40:1299.39.7** relative to the ability of a physician

1 or employee of a hospital who may become infected with the human  
 2 immunodeficiency virus to test the blood of a patient without the patient's consent.  
 3 It is the intent of the legislature that in the case of a person applying for or already  
 4 insured under an insurance policy, who will be or has been the subject of a test to  
 5 determine infection for human immunodeficiency virus (HIV), all facets of insurers'  
 6 practices in connection with HIV related testing and HIV test results and all facets  
 7 of other entities' and individuals' interactions with insurers relating to HIV related  
 8 testing or HIV test results shall be governed exclusively by Title 22 of the Louisiana  
 9 Revised Statutes of 1950 and any regulations promulgated pursuant thereto by the  
 10 commissioner of the Department of Insurance who shall have the authority to  
 11 promulgate such regulations.

12 Section 3. R.S. 40:1299.40 is hereby repealed.

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

18 Section 5. This Act shall become effective upon signature by the governor or, if not  
 19 signed by the governor, upon expiration of the time for bills to become law without signature  
 20 of the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 21 vetoed by the Governor and subsequently approved by the Legislature, this Act shall become  
 22 effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_