

Regular Session, 2012  
HOUSE BILL NO. 866

# ACT No. 600

BY REPRESENTATIVE ABRAMSON

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AN ACT

To amend and reenact R.S. 36:802(introductory paragraph), Part XXII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1299.39.5 through 1299.39.7, and R.S. 40:1299.58(C), 1299.131(A)(3), and 1300.11 and to enact R.S. 36:259(MM), relative to consent to medical treatment; to provide for methods by which informed consent may be obtained; to provide for definitions; to create the Louisiana Medical Disclosure Panel; to provide for membership, powers, and duties of such panel; to provide for attendance via telecommunications; to provide for limitations on liability; to provide for medical disclosure lists; to provide for exceptions to obtaining informed consent; to provide for the promulgation of rules and regulations; to provide for placement of the Louisiana Medical Disclosure Panel within the Department of Health and Hospitals; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

\* \* \*

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

\* \* \*

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

2 The agencies transferred by the provisions of R.S. 36:209(Q), 239(E),  
3 259(B), 259(T), 259(MM), 309(B), 359(B), 409(C), 459(B), 509(B), 610(B), 629(I),  
4 and 769(C) shall continue to be composed and selected as provided by law, and each  
5 shall continue to exercise all of the powers, duties, functions, and responsibilities  
6 provided or authorized for each by the constitution or laws which are in the nature  
7 of policymaking, rulemaking, licensing, regulations, enforcement, or adjudication  
8 and also shall continue to exercise all advisory powers, duties, functions, and  
9 responsibilities provided by law. Such powers, duties, functions, and responsibilities  
10 shall be exercised independently of the secretary and any assistant secretary, except  
11 that:

12 \* \* \*

13 Section 2. 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,  
21 marking, or affirmative action through electronic means pursuant to R.S.  
22 40:1299.40.1, to any medical or surgical procedure or course of procedures which  
23 sets forth in general terms the nature and purpose of the procedure or procedures,  
24 together with the known risks, if any, of death, brain damage, quadriplegia,  
25 paraplegia, the loss or loss of function of any organ or limb, of disfiguring scars  
26 associated with such procedure or procedures; acknowledges that such disclosure of  
27 information has been made and that all questions asked about the procedure or  
28 procedures have been answered in a satisfactory manner; and is evidenced by a

1 signature, marking, or affirmative action through electronic means, by the patient for  
2 whom the procedure is to be performed, or if the patient for any reason lacks legal  
3 capacity to consent, by a person who has legal authority to consent on behalf of such  
4 patient in such circumstances. Such consent shall be presumed to be valid and  
5 effective, in the absence of proof that execution of the consent was induced by  
6 misrepresentation of material facts.

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

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

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

24 ~~D.(1) Notwithstanding this Section or any other law to the contrary,~~  
25 ~~whenever it is determined by the hospital infection control committee or equivalent~~  
26 ~~body that an agent or employee of a hospital, or a physician having privileges at the~~  
27 ~~hospital, has been exposed to the blood or bodily fluids of a patient, in such a manner~~  
28 ~~as to create any risk that the agent, employee, or physician may become infected with~~

1           ~~the human immunodeficiency virus or other infectious agent if the patient is infected~~  
2           ~~with the human immunodeficiency virus or other infectious agent, in accordance~~  
3           ~~with the infectious disease exposure guidelines of the Centers for Disease Control~~  
4           ~~or the infectious disease exposure standards of the health care facility where the~~  
5           ~~exposure occurred, then the hospital infection control committee may, without the~~  
6           ~~consent of the patient, conduct such tests on blood previously drawn or body fluids~~  
7           ~~previously collected as are necessary to determine whether the patient is, in fact,~~  
8           ~~infected with the virus or other agent believed to cause acquired immune deficiency~~  
9           ~~syndrome or other infectious disease. If no previously drawn blood or collected~~  
10           ~~bodily fluids are available or are suitable, the hospital may order, without the consent~~  
11           ~~of the patient, that blood, bodily fluids, or both be drawn and collected from the~~  
12           ~~patient to conduct the necessary tests.~~

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

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

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

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

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

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

16                   ~~(2)(a) D. In a suit against a physician or other health care provider involving~~  
 17                   ~~a health care liability or medical malpractice claim which is based on the failure of~~  
 18                   ~~the physician or other health care provider to disclose or adequately to disclose the~~  
 19                   ~~risks and hazards involved in the medical care or surgical procedure rendered by the~~  
 20                   ~~physician or other health care provider, the only theory on which recovery may be~~  
 21                   ~~obtained is that of negligence in failing to disclose the risks or hazards that could~~  
 22                   ~~have influenced a reasonable person in making a decision to give or withhold~~  
 23                   ~~consent.~~

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

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

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

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

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

25           ~~(d) At least annually, or at such other period as the secretary may determine,~~  
26           ~~the secretary shall identify and examine any new medical treatments and surgical~~  
27           ~~procedures that have been developed since its last determinations, shall assign them~~  
28           ~~to the proper list, and shall establish the degree of disclosure required and the form~~

1 in which the disclosure shall be made. The secretary shall also review and examine  
2 such treatments and procedures for the purpose of revising lists previously published.  
3 These determinations shall be published in the same manner as described in  
4 Subparagraph (c) of this Paragraph.

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

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

20 (7)(a) ~~In a suit against a physician or other health care provider involving a~~  
21 ~~health care liability or medical malpractice claim which is based on the negligent~~  
22 ~~failure of the physician or other health care provider to disclose or adequately to~~  
23 ~~disclose the risks and hazards involved in the medical care or surgical procedure~~  
24 ~~rendered by the physician or other health care provider.~~

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

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

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

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

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

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

23                   (iii) ~~Disclose reasonable therapeutic alternatives and risks associated with~~  
 24                   ~~such alternatives;~~

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

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



1 F. Notwithstanding the provisions of Subsection E of this Section, consent  
 2 for dental treatment rendered by dentists not performing oral and maxillofacial  
 3 surgery in a hospital setting shall be governed exclusively by the provisions of R.S.  
 4 40:1299.131.

5 §1299.39.6. Louisiana Medical Disclosure Panel; creation; membership; powers;  
 6 duties

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

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

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

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

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

17 (a) Two members licensed to practice dentistry. One member who  
 18 specializes in oral and maxillofacial surgery shall be selected from a list of nominees  
 19 submitted to the governor by the Louisiana Society of Oral and Maxillofacial  
 20 Surgeons. The other member shall be selected from a list of nominees submitted to  
 21 the governor by the Louisiana Dental Association.

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

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

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

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

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

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

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, the podiatrist, the optometrist, the nurse practitioner, one  
 16                  attorney, and two physicians shall serve a term of two years, or until a successor is  
 17                  appointed and qualified.

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

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

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

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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          participate only 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 Section 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 Section, if  
30          it is given in writing, signed by the patient or a person authorized to give the consent

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

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

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

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

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

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

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

6                     (2) 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                    (3) Disclose reasonable therapeutic alternatives and risks associated with  
 11                    such alternatives.

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

14                    (5) 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                    Q. The department shall maintain a searchable database of all current  
 19                    medical disclosure lists and make such database available to the public on the  
 20                    website of the department.

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

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

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

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

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

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

16                   §1299.39.7. Exception to obtaining informed consent; human immunodeficiency  
17 virus or other infectious agents

18                   A. Notwithstanding the provisions of R.S. 40:1299.39.5 or any other law to  
19 the contrary, whenever it is determined by the hospital infection control committee  
20 or equivalent body that an agent or employee of a hospital or a physician having  
21 privileges at the hospital has been exposed to the blood or bodily fluids of a patient,  
22 in such a manner as to create any risk that the agent, employee, or physician may  
23 become infected with the human immunodeficiency virus or other infectious agent  
24 if the patient is infected with the human immunodeficiency virus or other infectious  
25 agent, in accordance with the infectious disease exposure guidelines of the Centers  
26 for Disease Control or the infectious disease exposure standards of the health care  
27 facility where the exposure occurred, the hospital infection control committee may,  
28 without the consent of the patient, conduct such tests on blood previously drawn or

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

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

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



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

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

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

9                                       \*       \*       \*

10           §1299.58. Consent to surgical or medical treatment for developmentally disabled  
 11                                       persons and residents of state-operated nursing homes

12                                       \*       \*       \*

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

17                                       \*       \*       \*

18           §1299.131. Consent to dental treatment

19                                       A. As used in this Part:

20                                       \*       \*       \*

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

24                                       \*       \*       \*

25           §1300.11. Purpose; intent; insurance and R.S. ~~40:1299.40(D)~~ 40:1299.39.7 not  
 26                                       affected

27                                       The legislature recognizes that confidentiality protection for information  
 28                                       related to human immunodeficiency virus (HIV) infection and acquired  
 29                                       immunodeficiency syndrome (AIDS) is an essential public health measure. In order  
 30                                       to retain the full trust and confidence of persons at risk, the state has an interest both

**CODING:** Words in ~~struck-through~~ type are deletions from existing law; words underscored are additions.

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

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

1           Section 4. This Act shall become effective upon signature by the governor or, if not  
2 signed by the governor, upon expiration of the time for bills to become law without signature  
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
5 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

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