

Regular Session, 2010

SENATE BILL NO. 443

BY SENATOR LAFLEUR

MALPRACTICE. Provides relative to civil actions against healthcare providers. (gov sig)

1 AN ACT

2 To enact R.S. 40:1299.59, and to repeal R.S. 40:1299.39.1 and 1299.47, relative to civil
3 actions against health care providers; to require the attachment of an expert report
4 to certain petitions for damages; to provide with respect to the content of the expert
5 report; to provide with respect to the procedure for filing the expert report and
6 answer to the petition; to provide for dismissal of actions for failure to file the report;
7 to provide relative to prescription or peremption; to repeal provisions of law relative
8 to medical review panels for both state and private claims; to provide for an effective
9 date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1299.59 is hereby enacted to read as follows:

12 **§1299.59. Professional liability; malpractice; healthcare providers; attachment**
13 **of expert report**

14 **A. This Section shall apply to the filing of any petition for damages**
15 **alleging "malpractice" by a "health care provider", as defined in R.S.**
16 **40:1299.41.**

17 **B.(1) With respect to any petition for damages as provided in Subsection**

1 A of this Section, the plaintiff shall file an expert report not later than the
2 ninetieth day after the filing of the petition alleging "malpractice" by a "health
3 care provider", as those terms are defined in R.S. 40:1299.41. The plaintiff
4 shall serve on each party, or if represented by counsel, on each party's attorney,
5 one or more expert reports, as defined in this Section, relative to the defendant
6 against whom an action alleging malpractice is asserted. The date for serving
7 the report may be extended by written agreement of the parties or by the court
8 after a hearing for good cause shown.

9 (2) The expert report shall contain:

10 (a) The professional background and qualifications of the expert;

11 (b) A statement with supporting information that the expert is actively
12 practicing and experienced in each discipline, field, specialty or sub-specialty,
13 whichever is applicable to the defendant and which is the subject of the report;

14 (c) A listing of each document or other information reviewed by the
15 expert in preparing the report;

16 (d) A summary of the grounds for each opinion and conclusion
17 supporting the claim, the applicable standard of care as it relates to the
18 defendant, whether the defendant departed from such standard of care with
19 supporting reasons, and whether the injury, harm or damage was the proximate
20 result of the alleged departure; and

21 (e) A statement that the expert has concluded that there is a reasonable
22 basis for filing the petition.

23 (3) The expert shall not be a party to the litigation nor have a material
24 interest in its outcome.

25 (4) With respect to a petition for damages for malpractice by a health
26 care provider, the expert must be actively practicing in the field, specialty, or
27 sub-specialty, whichever is applicable to the defendant health care provider,
28 and otherwise qualified to testify.

29 C. The failure of the plaintiff to file the expert report as provided in this

1 Section shall, absent good cause established after a hearing before the court,
 2 result in dismissal, with prejudice, of plaintiff's claims against a defendant
 3 identified in Subsection A of this Section.

4 D. The provisions of this Section shall also apply to any cross claim,
 5 counterclaim, third party demand or other incidental action against any
 6 defendant(s) identified in Subsection A.

7 E. The provisions of this Section shall not be construed to extend any
 8 applicable prescriptive or preemptive period.

9 F. The provisions of this Section shall not supersede R.S. 40:1299.41
 10 through 1299.49.

11 Section 2. R.S. 40:1299.39.1 and R.S. 40:1299.47 are hereby repealed in their
 12 entirety.

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

The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Camille Sebastien Perry.

DIGEST

LaFleur (SB 443)

Proposed law provides that any petition for damages alleging malpractice by a health care provider as defined in present law shall contain an expert report.

Proposed law provides that the plaintiff shall file the expert report no later than the 90th day after the filing of the petition alleging malpractice by a health care provider, as defined in present law.

Proposed law provides that the plaintiff shall serve on each party, or if represented by counsel, on each party's attorney, one or more expert reports, as defined in proposed law, relative to the defendant against whom an action alleging malpractice is asserted. The date for serving the report may be extended by written agreement of the parties or by the court after a hearing for good cause shown.

Proposed law provides that the expert report shall contain:

- (a) The professional background and qualifications of the expert;

- (b) A statement with supporting information that the expert is experienced in each discipline, field, specialty, or sub-specialty, whichever is applicable to the defendant and which is the subject of the report;
- (c) A listing of each document or other information reviewed by the expert in preparing the report;
- (d) Summary of the grounds for each opinion and conclusion supporting the claim, the applicable standard of care as it relates to the defendant, whether the defendant departed from such standard of care with supporting reasons, and whether the injury, harm or damage was the proximate result of the alleged departure; and
- (e) A statement that the expert has concluded that there is a reasonable basis for filing the petition.

Proposed law provides that the expert shall not be a party to the litigation nor have a material interest in its outcome.

Proposed law provides that the expert must be actively practicing in the field, specialty, or sub-specialty, whichever is applicable to the defendant health care provider, and otherwise qualified to testify, with respect to a petition for damages for malpractice by a health care provider.

Proposed law provides that the failure of the plaintiff to file the expert report as provided in proposed law shall, absent good cause established after a hearing before the court, result in dismissal, with prejudice, of the plaintiff's claims.

Proposed law provides that the provisions of proposed law shall also apply to any cross claim, counterclaim, third party demand or other incidental action against any defendant identified in proposed law.

Proposed law provides that the provisions of proposed law shall not be construed to extend any applicable prescriptive or preemptive period.

Present law (R.S. 40:1299.39.1) provides that all malpractice claims against the state, its agencies, or other persons covered by malpractice liability for state services, other than claims wherein the patients are prisoners and claims compromised or settled by the claimant and the division of administration with the concurrence of designated legal counsel for the state, shall be reviewed by a state medical review panel, to be administered by the commissioner of administration. Present law establishes the medical review panel and provides for the formation of its members and procedures and provides that no action against the state, its agencies, or a person covered by malpractice liability for state services, or his insurer, may be commenced in any court before the claimant's complaint has been presented to a state medical review panel.

Proposed law repeals present law provisions.

Present law (R.S. 40:1299.47) provides that all malpractice claims against health care providers covered by medical malpractice, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as provided in present law. Present law establishes the medical review panel and provides for the formation of its members and procedures and provides that no action against a health care provider, or his insurer, may be commenced in any court before the claimant's proposed complaint has been presented to a medical review panel.

Proposed law repeals present law provisions.

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

(Adds R.S. 40:1299.59; repeals R.S. 40:1299.39.1 and 1299.47)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Removes applicability to architects, engineers, and land surveyors.
2. Authorizes a court to extend the date for serving an expert report after a hearing for good cause shown.
3. Repeals present law provisions relative to state medical review panels and medical review panels for private claims.