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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

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## DIGEST

Proposed law provides that "expert" means:

- (1) With respect to opinion testimony regarding the applicable standard of care and whether a physician departed from such a standard of care, a physician who is actively practicing in the field, specialty, or subspecialty whichever is applicable of the defendant physician and otherwise qualified to testify under the requirements of present law.
- (2) With respect to opinion testimony regarding the applicable standard of care or the appropriateness of the health care rendered by a health care provider other than a physician, a person qualified to testify under the requirements of present law.
- (3) With respect to opinion testimony in a malpractice claim against a physician regarding whether the injury, harm, or damage claimed was the proximate result of the alleged departure from the applicable standard of care, a physician, whether or not a treating physician, who practices in a field, specialty, or subspecialty that is ordinarily and commonly engaged in the diagnosis and treatment of such injury, harm, or damage and who is otherwise qualified to render opinions on such causal relationship pursuant to present law.
- (4) With respect to opinion testimony in malpractice claim against to a dentist, optometrist, or chiropractic physician regarding whether the injury, harm, or damage claimed was the proximate result of the alleged departure from the applicable standard of care, a physician, dentist, optometrist, or chiropractic physician, whether or not a treating physician, dentist, optometrist, or chiropractic physician, who practices in a field, specialty, or subspecialty that is ordinarily and commonly engaged in the diagnosis and treatment of such injury, harm, or damage and who is otherwise qualified to render opinions on such causal relationship under R.S. 9:2794 or 2794.1 whichever is applicable.
- (5) With respect to opinion testimony in a malpractice claim against a health care provider other than a physician, dentist, optometrist, and chiropractic physician regarding whether the injury, harm, or damage claimed was the proximate result of the failure to render the appropriate health care, a person qualified to testify under the requirements of present law.

Proposed law provides that a nurse shall not be qualified to give opinion testimony as to whether the harm, injury, or damage claimed was the proximate result of the alleged departure from the applicable standard of care or from the failure to render the appropriate health care in a medical malpractice claim.

Proposed law provides that "expert report" means a written report by a person who qualifies as an expert pursuant to present law, that provides a fair summary of the expert's opinions as of the date of the report relative to each health care provider against whom a medical malpractice claim is asserted regarding the applicable standard of care, whether the health care provider departed from such standard of care and whether the injury, harm or damage was the proximate result of the alleged departure as provided for in present law.

Proposed law provides that the report shall include a certification by the expert that he has reviewed sufficient medical records upon which to base his opinion. The report shall also specifically identify the medical or hospital records and other documents and tangible things reviewed, and additionally it shall state any other factual sources upon which his opinions are founded.

Proposed law provides that for a malpractice claim filed on or before 12/31/08, the function of selecting the list of attorney names from which the selection of the attorney chairman of the medical review panels is to be made shall be the responsibility of the office of the clerk of the Louisiana Supreme Court.

Proposed law provides that all malpractice claims against health care providers covered by present law and which are filed as provided herein on or before 12/31/08, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as hereinafter provided for in present law. The filing of a request for review by a medical review panel as provided for in present law shall not be reportable by any health care provider, the Louisiana Patient's Compensation Fund, or any other entity to the Louisiana State Board of Medical Examiners, to any licensing authority, committee, or board of any other state, or to any credentialing or similar agency, committee, or board of any clinic, hospital, health insurer, or managed care company.

Proposed law provides that the otherwise timely filing of the request for a review of a claim on or before 12/31/08 shall suspend the time within which suit must be instituted, in accordance with present law, until 90 days following notification, by certified mail, as provided in present law, to the claimant or his attorney of the issuance of the opinion by the medical review panel, in the case of those health care providers covered by present law, or in the case of a health care provider against whom a claim has been filed under the provisions of present law, but who has not qualified under present law, until 90 days following notification by certified mail to the claimant or his attorney by the board that the health care provider is not covered by present law.

Proposed law provides that the timely filing of a request for review of a claim on or before 12/31/08 shall suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care providers, both qualified and not qualified, to the same extent that prescription is suspended against the party or parties that are the subject of the request for review.

Proposed law provides that filing or attempting to file a request for review of a malpractice claim on or after 1/1/09 shall not suspend or interrupt the running of prescription.

Proposed law provides that Louisiana State Board of Medical Examiners shall notify a claimant that it is refusing to accept for filing a request for review when the claim was not filed as provided herein before 1/1/09, and that, as provided in present law, prescription shall not be suspended or interrupted by such an attempted filing.

Proposed law provides that the board shall notify the claimant and all named defendants by certified mail, return receipt requested, that the claimant has attempted to file a claim on or after 1/1/09 and that such attempt to file was refused.

Proposed law provides that no action against a health care provider covered by present law, or his insurer, may be commenced in any court prior to 1/1/09 before the claimant's proposed complaint has been presented to a medical review panel established pursuant to present law.

Proposed law provides that the claim filing procedure provided herein shall apply to all malpractice claims filed on or after 1/1/09 against a qualified health care provider, regardless of when the claim arose.

Proposed law provides that any person asserting a malpractice claim shall furnish written notice of such claim by certified mail, return receipt requested, to the PCF and to each health care provider against whom such claim is being made at least 60 days before the filing of a suit in a court of competent jurisdiction and proper venue, provided however a claim which has been the subject of a previously filed medical review panel proceeding shall be exempt from this notice requirement and may be filed in a court of competent jurisdiction and proper venue. The notice shall reasonably describe the facts, circumstances, or incidents giving rise to the claim, including the dates or time frames thereof, and shall be accompanied by the authorization form for release of protected health information required herein.

Proposed law provides that in the event a claim is subsequently filed in a in a court of competent jurisdiction and proper venue, each claimant shall verify he has fully complied with the provisions of proposed law.

Proposed law provides that in the event that the claim is exempt from the notice requirement of proposed law because a claim has been the subject of a previously filed medical review panel proceeding, the claimant shall furnish a copy of any petition for damages filed a court of competent jurisdiction and proper venue to the PCF by certified mail, return receipt requested.

Proposed law provides that notice as provided in proposed law shall suspend the running of prescription as to any healthcare provider to whom such notice was mailed for a maximum of 75 days from the date of mailing, as evidenced by the certified mail receipt. Subject to present law, notice as required by proposed law shall also suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care providers, both qualified and not qualified, to the same extent that prescription is suspended against a health care provider to whom such notice was mailed as provided in proposed law. No suspension of the prescriptive period resulting from the mailing of such notice shall be construed to extend the three-year preemptive period established by present law.

Proposed law provides that each health care provider against whom a claim is being asserted shall be entitled to obtain complete and unaltered copies of the patient's medical records pursuant to the provisions of present law and proposed law.

Proposed law provides that upon receipt of written notice as provided in proposed law, each health care provider against whom a claim of malpractice is being asserted shall be entitled to discuss with and provide copies of medical or hospital records or other documents or tangible things related to the patient's health care to his attorney and professional liability insurer.

Proposed law provides that for the purposes of proposed law, a request for the medical records of a claimant who is incompetent shall be deemed to be valid if accompanied by an authorization in the form provided herein and signed by a person authorized by law to consent to medical treatment on behalf of said claimant.

Proposed law provides that for the purposes of proposed law, and notwithstanding present law, or any other law, a request for the medical records of a deceased person whose health care is the subject of alleged malpractice shall be deemed to be valid if accompanied by an authorization in the form provided herein and signed by a person authorized by law to assert any claim arising out of or related to the malpractice claimed.

Proposed law provides that except for those claims which were the subject of a previously filed medical review panel proceeding, any suit filed more than 60 days after 1/1/09 asserting a malpractice claim shall be dismissed as premature at the cost of the filing party if:

- (1) The claimant has failed to mail the notice required herein, or
- (2) The suit was filed fewer than 60 days after the mailing of such notice.

Proposed law provides that not later than the 120th day after the date of filing of the original petition asserting a malpractice claim, the claimant shall serve on each party or, if represented, on each party's attorney, one or more expert reports, as defined in R.S. 40:1299.41, with a curriculum vitae of each expert listed in the report, relative to each health care provider against whom a malpractice claim is asserted. The date for serving the report may be extended by written agreement of the claimant and health care provider. Each defendant health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

Proposed law provides that notwithstanding any other provision of proposed law, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts.

Proposed law provides that if, as to a defendant health care provider, an expert report has not been served within the period specified by Paragraph (1) herein, the court, on the motion of the affected health care provider, shall, subject to Paragraph (4), enter an order that dismisses the

malpractice claim with respect to the health care provider, and awards reasonable attorneys fees and costs. The filing of such a suit shall not interrupt or suspend the running of prescription.

Proposed law provides that if a court shall grant a motion challenging the adequacy of an expert report if it appears to the court, after hearing, that the report does not comply with all elements of the definition of an expert report in present law. If the court determines that an expert report does not comply with the requirements of present law, the court may grant one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, the 30-day extension shall run from the date the claimant first received the notice. If claimant fails to furnish an expert report which complies with the requirements of present law after the expiration of the court ordered extension the court shall dismiss the suit and award reasonable attorneys fees and costs.

Proposed law provides that until a claimant has served the expert report and curriculum vitae as required by proposed law, all discovery other than provided for in proposed law shall be stayed except the discovery related to the identification and acquisition of information in the form of medical or hospital records or other documents or tangible things related to the patient's health care.

Proposed law provides that a claimant may take the deposition of any health care provider against whom a malpractice claim has been asserted prior to the filing of the expert witness report upon certification to the court that the scope of the deposition shall be limited to information necessary for the preparation of the expert report.

Proposed law provides that the Louisiana Department of Health and Hospitals shall, prior to 11/1/008, publish in the Louisiana Register a form authorization that complies with the provisions of this section, with other requirements for authorizations provided by Louisiana law, and with present law, and any other applicable laws. This form shall be used by claimants to satisfy the requirements of proposed law.

Proposed law provides that no healthcare provider shall refuse to accept the published authorization form in a malpractice claim without good cause, but said healthcare provider shall continue to be entitled to receive the reimbursement for providing the copies allowed by present law.

Proposed law provides that when a malpractice claim filed on or after 1/1/09 alleges liability of both a state health care provider under the provisions of this Part and a health care provider under the provisions of present law for the same injury to or death of a patient, unless all parties have agreed otherwise, only the health care providers covered by present law shall be subject to the medical review panel convened in such instance to review the claims under present law.

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

(Amends R.S. 40:1299.44(A)(5)(c), 1299.47(A)(1)(a),(2)(a) and (B)(1)(a)(i); adds R.S.

40:1299.41(A)(22) and (23), 1299.47(A)(3)(d) and (4)(e), 1299.47.1, and 1299.49(A) and (B))