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**HIPPA  
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**HIPAA & Louisiana Law****Table of Contents**

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## **I. HIPAA Preemption of State Law**

**§160.201 Applicability.** The provisions of this subpart implement section 1178 of the Act, as added by section 262 of Public Law 104-191.

**§ 160.202 Definitions.** For purposes of this subpart, the following terms have the following meanings:

*Contrary*, when used to compare a provision of State law to a standard, requirement, or implementation specification adopted under this subchapter, means:

- (1) A covered entity would find it impossible to comply with both the State and federal requirements; or
- (2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act or section 264 of Pub. L. 104-191, as applicable.

*More stringent* means, in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a State law that meets one or more of the following criteria:

- (1) With respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under this subchapter, except if the disclosure is:
  - (i) Required by the Secretary in connection with determining whether a covered entity is in compliance with this subchapter; or
  - (ii) To the individual who is the subject of the individually identifiable health information.
- (2) With respect to the rights of an individual who is the subject of the individually identifiable health information of access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable; provided that, nothing in this subchapter may be construed to preempt any State law to the extent that it authorizes or prohibits disclosure of protected health information about a minor to a parent, guardian, or person acting *in loco parentis* of such minor.
- (3) With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.
- (4) With respect to the form or substance of an authorization or consent for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the authorization or consent, as applicable.
- (5) With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.

(6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

*Relates to the privacy of individually identifiable health information* means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

*State law* means a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.

### **§ 160.203 General rule and exceptions.**

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

(a) A determination is made by the Secretary under § 160.204 that the provision of State law:

(1) Is necessary:

(i) To prevent fraud and abuse related to the provision of or payment for health care;

(ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation;

(iii) For State reporting on health care delivery or costs; or

(iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or

(2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

(b) The provision of State law relates to the privacy of health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(d) The provision of State law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

## **II. HIPAA Provisions to Consider**

### **Subpart E – Privacy of Individually Identifiable Health Information**

- 164.500 Applicability.
- 164.501 Definitions.
- 164.502 Uses and disclosures of protected health information: general rules.
- 164.504 Uses and disclosures: organizational requirements.
- 164.506 Consent for uses or disclosures to carry out treatment, payment, and health care operations
- 164.508 Uses and disclosures for which an authorization is required.
- 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.
- 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.
  - (a) uses and disclosures required by law
  - (b) uses and disclosures for public health activities
  - (c) disclosures about victims of abuse, neglect or domestic violence
  - (d) uses and disclosures for health oversight activities
  - (e) disclosures for judicial and administrative proceedings
  - (f) disclosures for law enforcement purposes
  - (g) uses and disclosures about decedents
  - (h) uses and disclosures for cadaveric organ, eye or tissue donation purposes
  - (i) uses and disclosures for research purposes
  - (j) uses and disclosures to avert a serious threat to health or safety
  - (k) uses and disclosures for specialized government functions
  - (l) disclosures for workers' compensation
- 164.514 Other requirements relating to uses and disclosures of protected health information.
- 164.520 Notice of privacy practices for protected health information.
- 164.522 Rights to request privacy protection for protected health information.
- 164.524 Access of individuals to protected health information.
- 164.526 Amendment of protected health information.
- 164.528 Accounting of disclosures of protected health information.
- 164.530 Administrative requirements.
- 164.532 Transition requirements.
- 164.534 Compliance dates for initial implementation of the privacy standards.

**III. Specific Louisiana Statutes & Regulations****A. Medical Malpractice Cases****C.E. Art. 510. Health care provider-patient privilege**

\* \* \*

**F. Medical malpractice.**

(1) There shall be no health care provider-patient privilege in medical malpractice claims as defined in R.S. 40:1299.41 et seq. as to information directly and specifically related to the factual issues pertaining to the liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.

(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

**B. Workers' compensation records****R.S. 23:1127. Release of medical records and information**

A. It is the policy for the efficient administration of the workers' compensation system that there be reasonable access to medical information for all parties to coordinate and manage the care for the injured worker and to facilitate his return to work.

B. (1) In any claim for compensation, a health care provider who has at any time treated the employee related to the compensation claim shall release any requested medical information and records relative to the employee's injury, to any of the following persons:

- (a) The employee, his agent, or representative.
- (b) A licensed and approved vocational rehabilitation counselor assigned to the employee's claim.
- (c) Another health care provider examining the employee.
- (d) The employer, his agent, or representatives.
- (e) The employer's workers' compensation insurer or its agent or representative.

(2) Any information relative to any other treatment or condition shall be available to the employer or his workers' compensation insurer by subpoena or through a written release by the claimant.

C. (1) Consistent with the policy of reasonable access to medical information for all parties and notwithstanding the provisions of Article 510 of the Louisiana Code of Evidence or any other law to

the contrary, a health care provider, without the necessity of a subpoena or other discovery device, shall verbally discuss medical information regarding the injured employee with another health care provider examining the employee, a case manager, or a vocational rehabilitation counselor assigned to provide rehabilitation for that insured worker. No health care provider or his employee or agent shall be held civilly or criminally liable for disclosure of the medical information conveyed pursuant to this Section. This Paragraph shall not apply to examinations conducted by medical examiners appointed by the director pursuant to R.S. 23:1123.

(2) In any verbal communication or personal conference between the vocational rehabilitation counselor and any health care provider, for the purpose of providing rehabilitation services, the employee or his agent or representative shall cooperate in scheduling a reasonable date and time for such communication or conference and the employee or his agent or representative shall be given fifteen days notice of any such communication or conference, and shall be given the opportunity to attend or participate in the communication or conference.

(3) In addition to any other duty or responsibility provided by law, a case manager or vocational rehabilitation counselor who is a party to a verbal communication with the health care provider regarding an employee, as authorized by Paragraph (1) of this Subsection, shall, within five working days of the communication, mail a written summary of the communication and any work restrictions or modifications required for the employee's reasonable return to employment to the employee, his representative, and the health care provider. The summary shall be mailed by certified mail, return receipt requested, to the employee or his representative. It shall include a narration of any diagnosis or opinion given or discussed, any conclusions reached concerning the vocational rehabilitation plan, any return to work opportunities discussed consistent with the vocational rehabilitation plan, and the medical evaluation of the health care provider.

(4) Any medical information released in writing shall be furnished to the employee at no cost to him simultaneously with it being furnished to the employer, its insurer, agent, or representative. Any such records or information furnished to the employer or insurer or any other party pursuant to this Section shall be held confidential by them and the employer or insurer or any other party shall be liable to the employee for any actual damages sustained by him as a result of a breach of this confidence up to a maximum of one thousand dollars, plus all reasonable attorney fees necessary to recover such damages. An exception to this breach of confidentiality shall be any introduction or use of such information in a court of law, or before the Office of Workers' Compensation Administration or the Louisiana Workers' Compensation Second Injury Board.

D. Nothing in this Section shall be construed to authorize any case manager, vocational rehabilitation counselor assigned to provide rehabilitation services for the injured employee, or agent of the employer who is not treating the injured employee for his injuries to attend the injured employee's medical examinations.

### C. Coroners

#### **R.S. 13:3734. Privileged communication between health care provider and patient**

\* \* \*

F. Notwithstanding any law to the contrary, when conducting any investigation, the coroner or his authorized agents or employees may review any medical or dental records which he deems relevant to the investigation. Such records may be made available to him by the custodian thereof without the necessity of authorization, subpoena, or court order. No health care provider, custodian of records, or officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records, including any communication defined herein, when that disclosure is made pursuant to a request by the coroner or his authorized agents or employees.

G. Notwithstanding any provision of this Section or any other law to the contrary, an official of another state, whose functions are comparable to those of a coroner in this state and who is conducting an investigation in which Louisiana medical or dental records are material evidence, may request authorization for the release of those records from the coroner of the parish in which the custodian of the records is located. If the coroner determines that the requested records are relevant to the out-of-state investigation and the release of those records is appropriate, then the coroner shall authorize the custodian of those records to release those records to the requesting official. No health care provider, custodian of records, or officer, employee, or agent thereof shall be held civilly or criminally liable for the disclosure of a patient's records, including any communication defined herein, pursuant to a release authorized by the coroner.

#### **R.S. 33:1562. Notification of death under suspicious circumstances; penalties for failure to comply**

A. A physician or other person having knowledge of a death under sudden, accidental, violent, or suspicious circumstances or without medical attendance within thirty-six hours prior to death shall immediately notify the coroner of the death.

\* \* \*

C. A physician or other person reporting the death of any patient with a known or diagnosed virulent contagious disease, including acquired immune deficiency syndrome and including deceased individuals who are known carriers of any such disease but whose death is due to other causes, shall notify the coroner of such disease.

#### **RS 33:1563. Duty to hold autopsies, investigations, etc.**

A. The coroner shall either view the body or make an investigation into the cause and manner of death in all cases involving the following:

- (1) Suspicious, unexpected, or unusual deaths.
- (2) Sudden or violent deaths.
- (3) Deaths due to unknown or obscure causes or in any unusual manner.

- (4) Bodies found dead.
- (5) Deaths without an attending physician within thirty-six hours prior to the hour of death.
- (6) Deaths due to suspected suicide or homicide.
- (7) Deaths in which poison is suspected.
- (8) Any death from natural causes occurring in a hospital under twenty-four hours admission unless seen by a physician in the last thirty-six hours.
- (9) Deaths following an injury or accident either old or recent.
- (10) Deaths due to drowning, hanging, burns, electrocution, gunshot wounds, stabs or cutting, lightning, starvation, radiation, exposure, alcoholism, addiction, tetanus, strangulation, suffocation, or smothering.
- (11) Deaths due to trauma from whatever cause.
- (12) Deaths due to criminal means or by casualty.
- (13) Deaths in prison or while serving a sentence.
- (14) Deaths due to virulent contagious disease that might be caused by or cause a public hazard, including acquired immune deficiency syndrome.

### **D. Children**

#### **R.S. 40:1095. Medical treatment**

\* \* \*

C. Upon the advice and direction of a treating physician, or, in the case of a medical staff, any one of them, a physician or member of a medical staff may, but shall not be obligated to, inform the spouse, parent or guardian of any such minor as to the treatment given or needed, and such information may be given to, or withheld from the spouse, parent or guardian without the consent and over the express objection of the minor.

#### **R.S. 9:351. Access to records of child**

Notwithstanding any provision of law to the contrary, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent solely because he is not the child's custodial or domiciliary parent.

### **E. Rape**

#### **R.S. 40:2109.1. Procedures for rape victims; emergency rooms of licensed hospitals; immunity**

A. All licensed hospitals in Louisiana shall adhere to the following procedures in the event that a person, male or female, presents himself or is presented at the hospital for treatment as a victim of rape, attempted rape, carnal knowledge, or crime against nature:

(1) The victim shall make the decision of whether or not the incident will be reported to law enforcement officials. No hospital may require the person to report the incident in order to receive medical attention.

(2) If the victim does not wish to report the incident to law enforcement officials, the victim shall be examined and treated as a regular emergency room patient. Any injuries requiring medical attention shall be treated in the standard manner. Tests and treatments exclusive to a rape victim shall be explained to the patient, along with the costs for such tests. The patient shall decide whether or not such tests shall be conducted. Any examination and treatment shall include the preservation, in strict confidentiality, for a period of thirty days from the time the victim is presented for treatment, of tests or procedures, or both, and samples that may serve as potential evidence. The patient shall be informed of the length of time for which the specimens will be preserved. If the victim does not wish to report the incident to law enforcement authorities, the hospital's responsibilities, beyond medical treatment, shall be limited to the collection of tests, procedures, or samples that may serve as potential evidence. Any evidence so collected shall then be assigned a code number and the hospital shall maintain code records for a period of thirty days from the date the victim is presented for treatment, said code records to be used for identification should the victim later choose to report the incident. Once a code number has been assigned, custody of such evidence shall be transferred to the local law enforcement agency having jurisdiction in the parish in which the hospital is located, and responsibility for the custody of such evidence shall belong to that law enforcement agency. The hospital shall coordinate the transfer of such evidence with the local law enforcement agency in a manner designed to protect its evidentiary integrity. Evidence which is transferred to the custody of the appropriate law enforcement agency shall bear only the code number assigned by the hospital.

(3) If the victim wishes to report the incident to law enforcement officials, the hospital staff shall contact the appropriate law enforcement agency. After the incident has been reported, the victim shall be examined and treated as a regular emergency room patient, any injuries requiring medical attention will be treated in the standard manner, and specimens shall be kept for evidence. Such evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(4) (a) Notwithstanding any other provisions of this Section, if any person sixteen years old or younger presents himself or is presented at a licensed hospital for treatment as a victim of any of the alleged crimes listed in this Section, the hospital staff shall immediately notify the appropriate law enforcement official.

(b) The coroner of the parish, the district attorney, appropriate law enforcement officials, and hospital personnel may develop procedures pursuant to R.S. 15:440.1 through 440.6 to make a videotape of the person provided for in Subparagraph (a) when a person fourteen years old or under has been the victim of physical or sexual abuse. The costs of such videotaping may be allocated among the agencies and facilities involved.

(5) Notwithstanding any other provisions of this Section if the victim is physically or mentally incapable of making an intelligent decision, the hospital staff shall immediately notify the appropriate law enforcement officials.

### **F. Child abuse**

#### **R.S. 14:403. Abuse of children; reports; waiver of privilege**

A. (1) Any person who, under Children's Code Article 609(A), is required to report the abuse or neglect or sexual abuse of a child and knowingly and willfully fails to so report shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

\* \* \*

B. In any proceeding concerning the abuse or neglect or sexual abuse of a child or the cause of such condition, evidence may not be excluded on any ground of privilege, except in the case of communications between an attorney and his client or between a priest, rabbi, duly ordained minister or Christian Science practitioner and his communicant.

#### **Ch.C. Art. 609. Mandatory and permitted reporting**

A. With respect to mandatory reporters:

(1) Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall report in accordance with Article 610.

(2) Violation of the duties imposed upon a mandatory reporter subjects the offender to criminal prosecution authorized by R.S. 14:403(A)(1).

B. With respect to permitted reporters, any other person having cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect, including a judge of any court of this state, may report in accordance with Article 610.

C. The filing of a report, known to be false, may subject the offender to criminal prosecution authorized by R.S. 14:403(A)(1).

#### **Ch.C. Art. 603. Definitions**

As used in this Title:

\* \* \*

(13) "Mandatory reporter" is any of the following individuals performing their occupational duties:

(a) "Health practitioner" is any individual who provides health care services, including a physician, surgeon, physical therapist, dentist, resident, intern, hospital staff member, podiatrist, chiropractor, licensed nurse, nursing aide, dental hygienist, any emergency medical technician, a paramedic, optometrist, medical examiner, or coroner, who diagnoses, examines, or treats a child or his family.

(b) "Mental health/social service practitioner" is any individual who provides mental health care or social service diagnosis, assessment, counseling, or treatment, including a psychiatrist, psychologist, marriage or family counselor, social worker, aide, or other individual who provides counseling services to a child or his family. However, when a priest, rabbi, duly ordained minister, or Christian Science practitioner has acquired knowledge of abuse or neglect from a person during a confession or other sacred communication, he shall encourage that person to report but shall not be a mandatory reporter of that information given in confession or sacred communication.

(c) "Teaching or child care provider" is any person who provides training and supervision of a child, including any public or private teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child.

(d) Police officers or law enforcement officials.

(e) "Commercial film and photographic print processor" is any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides for compensation.

### **G. Adult abuse**

#### **R.S. 14:403.2. Abuse and neglect of adults; reports; investigation; waiver of privileges; penalties; immunity**

\* \* \*

C. Any person, including but not limited to a health, mental health, and social service practitioner, having cause to believe that an adult's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation shall report in accordance with Subsection D of this Section.

D. (1) Reports reflecting the reporter's belief that an adult has been abused or neglected shall be made to any adult protection agency or to any local or state law enforcement agency. These reports need not name the persons suspected of the alleged abuse or neglect.

(2) All reports shall contain the name and address of the adult, the name and address of the person responsible for the care of the adult, if available, and any other pertinent information.

(3) All reports received by a local or state law enforcement agency shall be referred to the appropriate adult protection agency.

## **H. Cancer registries**

### **R.S. 40:1299.84. Participation in program**

A. Any health care provider or radiation center diagnosing or providing treatment to cancer patients shall report each case of cancer to the president in a format prescribed by the president within six months of admission or diagnosis. If the facility fails to report in a format prescribed by the president, the president may enter the facility, obtain the information, and report it in the appropriate format. In these cases, the facility shall reimburse the president for the cost of obtaining and reporting the information.

B. Any health care provider or radiation center diagnosing or providing treatment to cancer patients shall report each cancer case. In addition, health care providers shall furnish follow-up data on each cancer patient when requested.

C. Any health care provider or radiation center which provides diagnostic or treatment services to patients with cancer shall report any additional demographic, diagnostic, or treatment information requested by the president concerning any person presently or previously receiving services who has or had a malignant tumor. Additionally, the president shall have physical access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified cancer patient.

### **R.S. 40:1299.85. Reports; liability for**

A. No action for damages arising from the disclosure of confidential or privileged information may be maintained against any person, or the employer or employee of any person, who participates in good faith in the reporting of cancer registry data or data for cancer morbidity or mortality studies in accordance with this Part.

B. No license of a health care provider may be denied, suspended, or revoked for good faith disclosure of confidential or privileged information or the reporting of cancer registry data or data for cancer morbidity studies in accordance with this Part.

C. Nothing in this Part shall be construed to apply to the unauthorized disclosure of confidential or privileged information when such disclosure is due to gross negligence or willful misconduct.

D. All information reported pursuant to this Part shall be confidential and privileged. The president shall take strict measures to ensure that all identifying information is kept confidential.

E. All information regarding case specific data, as distinguished from group, tabular, or aggregate data concerning patients or health care providers contained in records of interviews, written reports, and statements procured by the president or by any other person, agency, or organization acting in connection with cancer morbidity and mortality studies shall be confidential and privileged and shall be used solely for the purposes of the study. Nothing in this Section shall prevent the president from publishing compilations relating to morbidity and mortality studies which do not identify case specific data or sources of information.

### **R.S. 40:1299.87. Disclosure of medical records to cancer registries**

A. Notwithstanding any other provision of law to the contrary, all health care providers and radiation centers shall release an abstract of the patient's record reflecting the past or present physical condition of a patient upon request of the Louisiana cancer registry program established pursuant to the provisions of this Part. The cancer registry shall take strict measures to assure that all identifying information contained in patient record abstracts will be kept confidential.

\* \* \*

D. Any disclosure authorized by this Part shall include only the information necessary for the stated purpose of the requested disclosure, and shall be made only upon written agreement that the information will be kept confidential and will not be further disclosed without written authorization of the office of public health.

E. The furnishing of confidential data in accordance with this Part shall not expose any person, agency, or entity furnishing data to liability and shall not be considered to be in violation of any privileged or confidential relationship, provided the participant has acted in good faith in the reporting as required in this Part.

### **I. Burn injuries**

#### **R.S. 14:403.4. Burn injuries and wounds; reports; registry; immunity; penalties**

\* \* \*

B. In every case of a burn injury or wound in which the victim sustains second or third degree burns to five percent or more of the body or any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death shall be reported to the office of the state fire marshal, code enforcement and building safety hereinafter sometimes referred to as the "office". That office shall then immediately notify the appropriate local or state investigatory agency or law enforcement agency of the receipt of such report and its contents.

C. (1) An oral report shall be made within twenty-four hours of the examination or treatment of the victim. The report shall be made by the physician attending or treating the case, or by the manager, superintendent, director, or other person in charge whenever such case is treated in a hospital, burn center, sanitarium, or other medical facility. The report may be recorded electronically or in any other suitable manner, by the office of the state fire marshal, code enforcement and building safety.

(2) The oral report shall contain the following information if known:

- (a) Victim's name, address, and date of birth.
- (b) Address where the burn injury occurred.
- (c) Date and time of the burn injury.
- (d) Degree of burns and percent of body burned.
- (e) Area of body injured.

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- (f) Injury severity.
- (g) Apparent cause of burn injury.
- (h) Name and address of reporting facility.
- (i) Name of the attending physician.

\* \* \*

E. No cause of action shall exist against any person who in good faith makes a report pursuant to this Section, cooperates in an investigation by any agency, or participates in any judicial proceeding resulting from such report.

F. Any person who knowingly files a false report shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

### **J. Gunshot wounds**

#### **R.S. 14:403.5. Gunshot wounds; mandatory reporting**

A. The purpose of this Section is to aid law enforcement in combating violent crime through the rapid identification and reporting of all gunshot wounds or injuries treated by any medical professionals, practitioners, or associated persons.

B. In every case of a gunshot wound or injury presented for treatment to a medical professional, practitioner, or associated person, that professional, practitioner, or associated person shall make an oral notification to either the sheriff of the parish in which the wounded person was presented for treatment, or the chief or superintendent of police in the municipality in which the wounded person was presented for treatment immediately after complying with all applicable state and federal laws, rules, and regulations related to the treatment of emergencies and before the wounded person is released from the hospital. A written notation of this action shall be made on the emergency record.

C. The provisions of this Section shall not apply to any wounds or injuries received from the firing of an air gun.

D. Any report of a gunshot wound or injury required to be reported by this Section, which does not result in criminal prosecution shall not become public record and shall be destroyed by the law enforcement agency receiving the information.

E. Any person who fails to file a report under this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both. Any person who knowingly files a false report under this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

**K. Exposure to infectious disease****R.S. 40:1299.40. Consent to medical treatment, exceptions; Louisiana Medical Disclosure Panel; availability of lists to establish necessity and degree**

\* \* \*

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

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

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

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

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

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

**L. Birth defects****R.S. 40:31.41. Legislative intent**

It is the intent of the legislature to establish a system to collect, analyze, and disseminate data regarding birth defects in the state and to provide information to families of children born with birth defects regarding services available in their community and the development of appropriate prevention programs.

**R.S. 40:31.42. Definitions**

As used in this Part, the following definitions shall apply unless the content clearly states otherwise:

\* \* \*

(2) "Birth defect" means an abnormality of structure, function, or metabolism that develops during prenatal, perinatal, or early postnatal life that is diagnosed before a child reaches three years of age.

\* \* \*

(5) "Reporting source" means any physician, nurse, allied health professional, hospital, laboratory, and any other facility or agent which directly or indirectly provides medical services or other health care to a child affected by a birth defect.

\* \* \*

(7) "Surveillance system" means the process that is used to collect data about children with birth defects.

**R.S. 40:31.43. Louisiana Birth Defects Surveillance System**

A. The department shall establish a birth defects surveillance system within the office of public health to collect, analyze, interpret, and disseminate data relative to birth defects in Louisiana.

B. In establishing the surveillance system, the department shall require reporting sources to report information on birth defects to the office. However, reporting sources shall not collect or report information on birth defects of a child to the office whenever there is a written objection by the parent or legal guardian that collecting and reporting such information would conflict with their religious tenets or practices.

\* \* \*

**R.S. 40:31.44. Confidentiality**

Notwithstanding any other provision of the law to the contrary, individual identifying data in the surveillance system shall be confidential and shall not be subject to discovery. Such data shall not be released unless express written informed consent of a parent or legal guardian has been obtained. Data gathered by the office shall be used only for the purposes set forth in this Part.

\* \* \*

**R.S. 40:31.48. Rules and regulations**

The department shall promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Part.

### **M. Authorizations in general**

#### **R.S. 40:1299.96. Health care information; records**

A. (1) Each health care provider shall furnish each patient, upon request of the patient, a copy of any information related in any way to the patient which the health care provider has transmitted to any company, or any public or private agency, or any person.

(2) (a) Medical records of a patient maintained in a health care provider's office are the property and business records of the health care provider.

(b) Except as provided in R.S. 44:17, a patient or his legal representative, or in the case of a deceased patient, the executor of his will, the administrator of his estate, the surviving spouse, the parents, or the children of the deceased patient, seeking any medical, hospital, or other record relating to the patient's medical treatment, history, or condition, either personally or through an attorney, shall have a right to obtain a copy of such record upon furnishing a signed authorization and upon payment of a reasonable copying charge, not to exceed one dollar per page for the first twenty-five pages, fifty cents per page for twenty-six to five hundred pages, and twenty-five cents per page thereafter, a handling charge not to exceed fifteen dollars for hospitals and seven dollars and fifty cents for other health care providers, and actual postage. The individuals named herein shall also have the right to obtain copies of patient X-rays, microfilm, and electronic and imaging media, upon payment of reasonable reproduction costs and a handling charge of twenty dollars for hospitals and ten dollars for other health care providers. In the event a hospital record is not complete, the copy of the records furnished hereunder may indicate, through a stamp, coversheet, or otherwise, that the record is incomplete.

(c) If a copy of the record is not provided within a reasonable period of time, not to exceed fifteen days following the receipt of the request and written authorization, and production of the record is obtained through a court order or subpoena duces tecum, the health care provider shall be liable for reasonable attorney fees and expenses incurred in obtaining the court order or subpoena duces tecum. Such sanctions shall not be imposed unless the person requesting the copy of the record has by certified mail notified the health care provider of his failure to comply with the original request, by referring to the sanctions available, and the health care provider fails to furnish the requested copies within five days from receipt of such notice. Except for their own gross negligence, such health care providers shall not otherwise be held liable in damages by reason of their compliance with such request or their inability to fulfill the request.

(d) A health care provider may deny access to a record if the health care provider reasonably concludes that knowledge of the information contained in the record would be injurious to the health or welfare of the patient or could reasonably be expected to endanger the life or safety of any other person.

(e) Nothing in this Section shall be construed to limit or prohibit access to the information contained in the records of a patient maintained by a health care provider in any legally

permissible manner other than those delineated pursuant to R.S. 22:213.2 and in this Section, subject to the provisions of R.S. 13:3734.

\* \* \*

B. As used in this Section:

- (1) "Health care provider" means a "health care provider" as defined in R.S. 40:1299.41 or a "state health care provider" as defined in R.S. 40:1299.39.
- (2) "Patient" means a natural person who receives or should have received health care from a licensed health care provider, under a contract, express or implied.

C. The provisions of this Section shall not be applicable to a health care provider who has evaluated or examined a patient at the request of any agency of the state or federal government in charge of the administration of any of the assistance or entitlement programs under the Social Security Act. The records of such evaluation or examination shall be retained for ninety days after mailing or upon proof of receipt of the records, whichever period is shorter. Nothing herein shall be construed as limiting or prohibiting the access to health care information and records of a patient that are retained by the Social Security Administration in any legally permissible manner under state law that is not contrary to federal law or regulation.

#### **N. Immunization records**

#### **R.S. 44:17. Immunization records; definitions; disclosure; liability; procedures**

A. Definitions. As used in this Section:

- (1) "Minor" means a person who is seventeen years old or younger or who is not legally emancipated.
- (2) "Patient" means a natural person who receives health care from a licensed health care provider under a contract, expressed or implied.
- (3) "Private health care provider" means:
  - (a) A physician, surgeon, licensed registered or licensed practical nurse, and any employee of a physician or surgeon acting within the course and scope of employment and who is not providing health care services by or on behalf of the state.
  - (b) A resident, intern, or student of, or any person who is otherwise qualified in a discipline listed in Subparagraph (a) of this Paragraph when the person is acting within the course and scope of the training or staff appointment in and under the supervision of the health care providers listed in Subparagraph (a) of this Paragraph.
- (4) "Representative of a patient" means a person who is a parent, tutor, curator, spouse, trustee, attorney, or other legal agent of the patient and who is authorized, by and on behalf of the patient, to exercise any of the patient's rights or privileges.
- (5) "State health care provider" means a state health care provider as defined in R.S. 40:1299.39.

B. Information and records pertaining to the immunization status of persons against childhood diseases as required by R.S. 17:170 and R.S. 40:4(A)(2), may be disclosed and exchanged with verbal consent of the patient or his representative and without a patient's, or his representative's, written release authorizing such disclosure, to any of the following:

- (1) State health care provider.
- (2) Private health care provider.
- (3) Representative of a patient.
- (4) A patient who is not a minor.

C. If any person authorized in Subsection B discloses such information for any purpose other than for administering or receiving vaccinations, such disclosure shall be considered as an unauthorized release of confidential information, and such person shall be liable for civil damages.

D. The Department of Health and Hospitals shall promulgate rules and regulations, in accordance with the Administrative Procedure Act, to establish procedures whereby immunization information may be released from one health care provider to another.

### **O. Patient Representative**

#### **R.S. 13:3734. Privileged communication between health care provider and patient**

\* \* \*

D. Nothing in this Section shall preclude the health care provider from disclosing privileged information by medical report either before or after any legal proceedings are instituted, provided that he is in receipt of a written authorization executed by the patient. If the health care provider knows or reasonably believes that the patient is physically or mentally incapable of authorizing release, the health care provider may disclose privileged information provided he is in receipt of a written authorization executed by a person authorized under R.S. 40:1299.40 to consent to medical treatment for the patient. Furthermore, when a patient is represented by an attorney and that attorney provides the health care provider with written authorization executed by the patient, the health care provider may disclose to the attorney any communication which was necessary to enable him to diagnose, treat, prescribe, or act for the patient and may provide to the attorney, as agent for the patient, any medical reports, X-rays, or any other written information the health care provider has regarding the patient, all without the necessity of complying with formal discovery.

\* \* \*

[R.S. 40:1299.40(A)(1) authorizes consent by “a person who has legal authority to consent on behalf of such patient in such circumstances”. R.S. 40:1299.53 lists who those persons are, as follows:]

**R.S. 40:1299.53 Persons who may consent to surgical or medical treatment**

A. In addition to such other persons as may be authorized and empowered, any one of the following persons in the following order of priority, if there is no person in a prior class who is reasonably available, willing, and competent to act, is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures including autopsy not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician:

- (1) Any adult, for himself.
- (2) The judicially appointed tutor or curator of the patient, if one has been appointed.
- (3) An agent acting pursuant to a valid mandate, specifically authorizing the agent to make health care decisions.
- (4) The patient's spouse not judicially separated.
- (5) An adult child of the patient.
- (6) Any parent, whether adult or minor, for his minor child.
- (7) The patient's sibling.
- (8) The patient's other ascendants or descendants.
- (9) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care and any guardian for his ward.

B. If there is more than one person within the above named class in Paragraphs (A)(1) through (9), the consent for surgical or medical treatment shall be given by a majority of those members of the class available for consultation.

**P. Subpoenas****R.S. 13:3715.1. Medical or hospital records of a patient; subpoena duces tecum and court order to a health care provider; reimbursement for records produced**

A. As used in this Section, the following terms shall have the respective meanings ascribed thereto:

- (1) Patient "records" shall not be deemed to include x-rays, electrocardiograms, and like graphic matter unless specifically referred to in the subpoena, summons, or court order.
- (2) "Health care provider" shall mean a person, partnership, corporation, facility, or institution defined in R.S. 40:1299.41(A)(1).

B. The exclusive method by which medical, hospital, or other records relating to a person's medical treatment, history, or condition may be obtained or disclosed by a health care provider, shall be pursuant

to and in accordance with the provisions of R.S. 40:1299.96 or Code of Evidence Article 510, or a lawful subpoena or court order obtained in the following manner:

(1) A health care provider shall disclose records of a patient who is a party to litigation pursuant to a subpoena issued in that litigation, whether for purposes of deposition or for trial and whether issued in a civil, criminal, workers' compensation, or other proceeding, but only if: the health care provider has received an affidavit of the party or the party's attorney at whose request the subpoena has been issued that attests to the fact that such subpoena is for the records of a party to the litigation and that notice of the subpoena has been mailed by registered or certified mail to the patient whose records are sought, or, if represented, to his counsel of record, at least seven days prior to the issuance of the subpoena; and the subpoena is served on the health care provider at least seven days prior to the date on which the records are to be disclosed, and the health care provider has not received a copy of a petition or motion indicating that the patient has taken legal action to restrain the release of the records. If the requesting party is the patient or, if represented, the attorney for the patient, the affidavit shall state that the patient authorizes the release of the records pursuant to the subpoena. No such subpoena shall be issued by any clerk unless the required affidavit is included with the request.

(2) Any attorney requesting medical records of a patient, who is not a party to the litigation in which the records are being sought may obtain the records by written authorization of the patient whose records are being sought or if no such authorization is given, by court order, as provided in Paragraph (5) hereof.

(3) Any attorney requesting medical records of a patient who is deceased may obtain the records by subpoena, as provided in Paragraph (1) hereof, by written authorization of the person authorized under Louisiana Civil Code Article 2315.1 or the executor or administrator of the deceased's estate, or by court order, as provided in Paragraph (5) hereof.

(4) Any subpoena for medical records issued by the office of workers' compensation administration in the Department of Labor, or by a hearing officer or agent employed by such office, shall for all purposes be considered a subpoena within the meaning of this Section.

(5) A court shall issue an order for the production and disclosure of a patient's records, regardless of whether the patient is a party to the litigation, only after a contradictory hearing with the patient, or, if represented, with his counsel of record, or, if deceased, with those persons identified in Paragraph (3) hereof, and after a finding by the court that the release of the requested information is proper; or with consent of the patient.

C. No health care provider, employee, or agent thereof shall be held civilly or criminally liable for disclosure of the records of a patient pursuant to the procedure set forth in this Section, R.S. 40:1299.96, or Code of Evidence Article, provided that the health care provider has not received a copy of the petition or motion indicating that legal action has been taken to restrain the release of the records.

D. Unless the subpoena or court order otherwise specifies, it shall be sufficient compliance therewith if the health care provider delivers by registered or certified mail, at least forty-eight hours prior to the date upon which production is due, or delivers by hand on the date upon which production is due a true and correct copy of all records described in such subpoena. However, no subpoena or court order shall require the production of original, nonreproducible materials and records unless accompanied by a court order or stipulation of the parties and the health care provider which specifies the person who will be responsible for the care of the items to be produced, the date and manner of the return to the provider of the items to be produced, and that the items to be produced are not to be destroyed or subject to

destructive testing. Any subpoena duces tecum not timely served shall be quashed by the trial court without the necessity of an appearance by the hospital, health care facility, or medical physician.

E. The records shall be accompanied by the certificate of the health care provider or other qualified witness, stating in substance each of the following:

(1) That the copy is a true copy of all records described in the subpoena.

(2) That the records were prepared by the health care provider in the ordinary course of the business of the health care provider at or near the time of the act, condition, or event.

F. If the health care provider has none of the records described, or only part thereof, the health care provider shall so state in the certificate, and deliver the certificate and such records as are available.

G. The health care provider shall be reimbursed by the person causing the issuance of the subpoena, summons, or court order in accordance with the provisions of R.S. 40:1299.96.

H. Notwithstanding any other provision of law to the contrary, no health care provider, as defined in R.S. 40:1299.96, shall be required to grant access to or copying of photographs, or both, of any minor or part of a minor's body who is alleged to be the victim of child sexual abuse unless a court of competent jurisdiction, after a contradictory hearing at which the health care provider may but need not be present, orders the health care provider to grant access to or copying of said photographs to the moving party's counsel of record or experts qualified in the medical diagnosis of child sexual abuse, or to both. The court's order granting the access to or copying of said photographs shall be limited to the movant's counsel of record or the experts qualified in the medical diagnosis of child sexual abuse, or both; shall be limited solely to use of said photographs for the purposes of trial preparation; shall prohibit further copying, reproduction, or dissemination of said photographs; and shall prohibit counsel of record or the experts qualified in the medical diagnosis of child sexual abuse from allowing any other person access to said photographs without court order and for good cause shown.

I. A coroner, deputy coroner, or other assistant, while acting in his official capacity relating to a physical or mental investigation and examination or an investigation into the cause and manner of a death, is exempt from complying with the provisions of this Section.

J. The Louisiana State Board of Medical Examiners, Louisiana State Board of Dentistry, Louisiana State Board of Psychologists, Louisiana State Board of Nursing, and Louisiana Board of Pharmacy, while acting in an official capacity relating to an investigation of an individual over whom such board has regulatory authority shall be exempt from complying with the notice provisions of this Section when the subpoena clearly states that no notice or affidavit is required. Notwithstanding any privilege of confidentiality recognized by law, no health care provider or health care institution with which such health care provider is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of such board for any medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by such individual under investigation; however, the identity of any patient identified in or by such records or information shall be maintained in confidence by such board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, such board shall cause any such medical records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates.

K. Any attorney who causes the issuance of a subpoena or court order for medical, hospital, or other records relating to a person's medical treatment, history, or condition and who intentionally fails to provide notice to the patient or to the patient's counsel of record in accordance with the requirements of this Section shall be subject to sanction by the court.

L. No provision of this Section shall preclude a patient from personally receiving a copy or synopsis of his medical records as provided by law.

### **Q. Copy Charges**

#### **R.S. 40:1299.96. Health care information; records**

A(2) ....

(b) Except as provided in R.S. 44:17, a patient or his legal representative, or in the case of a deceased patient, the executor of his will, the administrator of his estate, the surviving spouse, the parents, or the children of the deceased patient, seeking any medical, hospital, or other record relating to the patient's medical treatment, history, or condition, either personally or through an attorney, shall have a right to obtain a copy of such record upon furnishing a signed authorization and upon payment of a reasonable copying charge, not to exceed one dollar per page for the first twenty-five pages, fifty cents per page for twenty-six to five hundred pages, and twenty-five cents per page thereafter, a handling charge not to exceed fifteen dollars for hospitals and seven dollars and fifty cents for other health care providers, and actual postage. The individuals named herein shall also have the right to obtain copies of patient X-rays, microfilm, and electronic imaging media, upon payment of reasonable reproduction costs and a handling charge of twenty dollars for hospitals and ten dollars for other health care providers. In the event a hospital record is not complete, the copy of the records furnished hereunder may indicate, through a stamp, coversheet, or otherwise, that the record is incomplete.

\* \* \*

B. As used in this Section:

(1) "Health care provider" means a "health care provider" as defined in R.S. 40:1299.41 or a "state health care provider" as defined in R.S. 40:1299.39.

(2) "Patient" means a natural person who receives or should have received health care from a licensed health care provider, under a contract, express or implied.

A. The provisions of this Section shall not be applicable to a health care provider who has evaluated or examined a patient at the request of any agency of the state or federal government in charge of the administration of any of the assistance or entitlement programs under the Social Security Act. The records of such evaluation or examination shall be retained for ninety days after mailing or upon proof of receipt of the records, whichever period is shorter. Nothing herein shall be construed as limiting or prohibiting the access to health care information and records of a patient that are retained by the Social Security Administration in any legally permissible manner under state law that is not contrary to federal law or regulation.

**LAC Title 40, Section 5123. Copies of Records and Reports**

\* \* \*

B. Health care providers are entitled to recover a reasonable amount, not to exceed \$1.00 per page, to cover the cost of copying documents which have been requested by the carrier.

1. Certain procedure code descriptors require the submission of records and/or reports with the claim form. There is no reimbursement of copy charges to the provider for these required records and reports.
2. Documentation which is submitted by the provider, but was not specifically requested by the carrier, is not allowed a copy charge.

C. Health care providers must furnish an injured employee copies of his records and reports at the same time as copies are being furnished to the employer or carrier, at no expense to the employee. If additional copies are requested by claimant or his attorney, the copy charge to the employee or his attorney may not exceed \$0.50 per page.

\* \* \*

**R. Retention****42 CFR 164.530 Administrative requirements.**

\* \* \*

(j) (1) Standard: documentation. A covered entity must:

- (i) **Maintain the policies and procedures provided for in paragraph (i) of this section in written or electronic form;**
- (ii) **If a communication is required by this subpart to be in writing, maintain such writing, or an electronic copy, as documentation; and**
- (iii) **If an action, activity, or designation is required by this subpart to be documented, maintain a written or electronic record of such action, activity, or designation.**

(2) **Implementation specification: retention period. A covered entity must retain the documentation required by paragraph (j)(1) of this section for six years from the date of its creation or the date when it last was in effect, whichever is later.**

**S. Peer Review Records****R.S. 13:3715.3. Peer review committee records; confidentiality**

A. Notwithstanding the provisions of R.S. 44:7(D) or any other law to the contrary, all records, notes, data, studies, analyses, exhibits, and proceedings of:

- (1) Any public hospital committee, medical organization peer review committee, any nationally recognized improvement agency or commission including, but not limited to, the Joint Commission

on Accreditation of Healthcare Organizations (JCAHO), or any committee or agency thereof, or any healthcare licensure agency of the Louisiana Department of Health and Hospitals, public hospital board while conducting peer reviews, dental association peer review committee, professional nursing association peer review committee, extended care facility committee, nursing home association peer review committee, peer review committee of a group medical practice of twenty or more physicians, peer review committee of a freestanding surgical center licensed pursuant to R.S. 40:2131 et seq., or health maintenance organization peer review committee, including but not limited to the credentials committee, the medical staff executive committee, the risk management committee, or the quality assurance committee, any committee determining a root cause analysis of a sentinel event, established under the bylaws, rules, or regulations of such organization or institution, or

(2) Any hospital committee, the peer review committees of any medical organization, dental association, professional nursing association, nursing home association, social workers association, group medical practice of twenty or more physicians, ambulatory surgical center licensed pursuant to R.S. 40:2131 et seq., ambulance service company, health maintenance organization, any nationally recognized improvement agency or commission including, but not limited to, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or any committee or agency thereof, or any healthcare licensure agency of the Louisiana Department of Health and Hospitals, or healthcare provider as defined in R.S. 40:1299.41(A)(1), or extended care facility committee, including but not limited to the credentials committee, the medical staff executive committee, the risk management committee, or the quality assurance committee, any committee determining a root cause analysis of a sentinel event, established by the peer review committees of a medical organization, dental organization, group medical practice of twenty or more physicians, social workers association, ambulatory surgical center licensed pursuant to R.S. 40:2131 et seq., ambulance service company, health maintenance organization, or healthcare provider as defined in R.S. 40:1299.41(A)(1), or private hospital licensed under the provisions of R.S. 40:2100 et seq.,

shall be confidential wherever located and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee and shall not be available for discovery or court subpoena regardless of where located, except in any proceedings affecting the hospital staff privileges of a physician, dentist, psychologist, or podiatrist the records forming the basis of any decision adverse to the physician, dentist, psychologist, or podiatrist may be obtained by the physician, dentist, psychologist, or podiatrist only. However, no original record or document, which is otherwise discoverable, prepared by any person, other than a member of the peer review committee or the staff of the peer review committee, may be held confidential solely because it is the only copy and is in the possession of a peer review committee.

B. No employee, physician, dentist, public or private hospital, organization, or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or dentist or confined in such hospital or institution shall be liable in damages to any person by reason of furnishing such information.

C. No member of any such committee designated in Subsection A of this Section or any sponsoring entity, organization, or association on whose behalf the committee is conducting its review shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

D. Medicaid or Medicare benefits or insurance benefits provided by a private insurer shall not be denied to any person due to inability to secure records or proceedings referred to in this Section.

E. Nothing contained herein shall be construed to prevent disclosure of such data to appropriate state or federal regulatory agencies which by statute or regulation are otherwise entitled to access to such data.

F. Nothing herein shall be construed to prevent disclosure of a patient's hospital record, as defined by R.S. 40:2144, to the patient or his duly authorized representative.

G. (1) As used in this Subsection, the following terms shall mean:

(a) "Board" means the Louisiana State Board of Medical Examiners, Louisiana State Board of Dentistry, Louisiana State Board of Psychologists, Louisiana State Board of Nursing, Louisiana Board of Pharmacy, as well as any Louisiana licensing and regulatory board or agency whose licensees, certificate holders, or registrants are subject to any form of peer review identified in Subsection A of this Section.

(b) "Licensee" means an individual who possesses a license, certificate or registration duly issued by a board, or an individual who has made application for such a license, certificate or registration.

(2) The boards defined in Subparagraph (1)(a) of this Subsection are hereby designated as appropriate state regulatory agencies as provided by Subsection E of this Section. Any board whose licensees are subject to any form of peer review identified in Subsection (A) of this Section shall be granted access to such peer review information, data, reports, or records as that board determines is necessary to an investigation or an adjudication of an individual over whom such board has regulatory authority. The board having access to such peer review information, data, reports, or records shall receive and maintain that information, data, reports, or records as confidential and privileged and shall take measures to preserve its confidentiality, including the assertion of all available evidentiary privileges and protection of patient identification as specified in R.S. 13:3715.1(J).

(3) When such disclosure is requested and made in a manner authorized in Paragraph (G)(4) of this Subsection, the verbal, written or other disclosure of peer review information, data, reports, or records by any person, committee, hospital, or other peer review entity described in Subsection (A) of this Section to any board conducting investigation or adjudication functions shall not constitute a waiver of any legal or evidentiary privilege, nor form the basis of any claim or suit for damages or injunctive relief of whatsoever kind or nature, including breach of confidentiality or invasion of privacy or otherwise, nor deprive the person, committee, hospital, or other peer review entity making the disclosure of the benefit of the immunities otherwise provided in Subsections (B) and (C) of this Section.

(4) Disclosure is deemed to be authorized in any of the following circumstances:

(a) An interview of a witness or potential witness conducted by a duly authorized officer, employee or attorney on behalf of the Louisiana board, acting in his or her official capacity, and accompanied by a validly issued investigatory subpoena or subpoena duces tecum.

(b) As part of the production of documents in response to a validly issued investigative subpoena duces tecum by a board.

(c) In response to questions or as part of production of documents at a duly noticed deposition or any other form of discovery authorized under R.S. 49:956(6) in an adjudication proceeding pending before such board.

(d) In response to questions or information provided pursuant to a subpoena or subpoena duces tecum issued in connection with an adjudication proceeding conducted by a board, which hearing may be conducted in executive session to preserve confidentiality of peer review privileged materials, including information, data, reports and records.

(5) When one or more of the provisions of Paragraph (4) are applicable, no committee or entity listed in Subsection A of this Section and no health care provider or health care institution, including the involved licensee or person over whom such board has regulatory authority, shall refuse to provide verbal, written or recorded information, data, reports or records as a witness or otherwise on the basis of the privilege provided in Subsection (A) of this Section or the healthcare provider - patient privilege provided in Code of Evidence Article 510.

### **T. Birth Certificates**

#### **R.S. 40:44. Compulsory registration of births; rejection of certificates**

A. (1) A certificate of every childbirth shall be filed with the local registrar within fifteen days after birth in the parish in which the birth occurred or, at the direction of the state registrar, the certificate shall be filed directly with the central vital records registry. In the event that any information or signature required by this Chapter has not been obtained within the time allowed, the person responsible for preparing the certificate shall nevertheless file the certificate with such information and signatures as have been obtained and shall demonstrate that a reasonable effort has been made to obtain the missing information or signature. For the purposes of this Section, a request by certified mail to the last known address of the person or entity having the needed information or required to sign after an attempt to contact the person or entity by regular mail, telephone, or both, shall constitute reasonable effort.

(2) In the event that a signature other than the physician's signature has not been obtained, then the hospital shall also certify on a separate document that the information contained on the certificate accurately reflects the contents of the medical record. The state registrar or local registrar shall then sign the certificate in place of the missing signature.

B. No certificate shall be returned for completion which complies with this Section. No certificate which is otherwise accurate and legible shall be rejected for minor blemishes or aesthetic flaws, except that certificates which contain erasures, liquid paper, type-overs, or other evidence of alteration in the legal section shall not be accepted by the state registrar nor shall documents be accepted which are not machine readable due to information overlap with lines or text on the birth certificate form.

C. A certificate not in compliance with this Section or otherwise properly rejected shall be returned within fifteen days of receipt by the local registrar to the person charged by R.S. 40:45 with preparing it. That person shall, within fifteen days of receipt, obtain the missing information or signature or demonstrate that a reasonable effort has been made to obtain the missing information or signature.

## Speaker

### **Gregory D. Frost**

*Roedel Parsons Koch Frost Balhoff & McCollister*

Gregory D. Frost is a partner in the law firm of Roedel, Parsons, Koch, Frost, Balhoff & McCollister. His practice concentrates in healthcare law and governmental relations, including the representation of physicians, not-for-profit, for-profit and governmental hospitals, other types of healthcare providers, and health care trade associations. His legal practice includes licensure and other regulatory matters, Medicare, Medicaid and workers' compensation reimbursement issues, defense of civil and criminal fraud prosecutions, transactional matters and litigation involving healthcare providers. His governmental relations practice involves assisting clients in the development and implementation of complete legislative and regulatory strategies.

Prior to joining his firm, Mr. Frost was Vice President of Legal & Governmental Affairs with the Louisiana Hospital Association for more than eight years. He has lectured at Louisiana State University, Tulane University, the University of Louisiana at Lafayette, has served on the adjunct faculty of the College of St. Francis, and regularly speaks before trade and professional organizations and legal audiences. In addition to numerous articles on health law issues, he is the editor of *Louisiana Medical Records Law* which is currently in use as a textbook at two Louisiana colleges. He has also edited *Managed Care, Collections and Related Issues*, and the *Workers' Comp Medicals Handbooks* (five volumes). Mr. Frost is a member of the American Health Lawyers Association, the Association of Louisiana Lobbyists, the Louisiana State and Baton Rouge Bar Associations. He is also a founding member and three-term director of the Louisiana Society of Hospital Attorneys. He received his J.D. degree from LSU in 1981.

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## Related Links

Louisiana HIPAA WorkGroups – [www.HIPAAPrivacyWorkGroups.com](http://www.HIPAAPrivacyWorkGroups.com)

The WorkGroups are a package of educational sessions and related resources that help covered entities implement the HIPAA Privacy requirements. In addition to the series of substantive presentations, members get access to an actively monitored list service, members-only website resources, preferred vendor discounts, and much more.

Louisiana HIPAA Conference – [www.LaHIPAAConference.com](http://www.LaHIPAAConference.com)

The 2001 Louisiana HIPAA Conference featured 28 sessions, 21 sponsoring associations (including the Louisiana State Medical Society and the Louisiana Medical Group Management Association), 13 exhibitors, more than 30 speakers, and over 300 registrants. The 2002 Louisiana Conference is currently being planned, and the website will keep you informed.