AN ACT

To amend and reenact R.S. 40:1299.53, relative to persons who may consent to surgical or medical treatment; to provide relative to an adult friend of certain patients; to provide relative to circumstances where no person is reasonably available to consent for the patient; to provide relative to physician discretion; to provide for certain terms, conditions, and procedures; to provide for certain immunity; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.53 is hereby amended and reenacted to read as follows:

§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 child.
(7) The patient's sibling.

(8) The patient's other ascendants or descendants.

(9) Upon the inability of any adult to consent for himself and in the absence of any person listed in Paragraphs (2) through (8) of this Subsection, an adult friend of the patient. For purposes of this Subsection to consent, "adult friend" means an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient’s health care views and desires, and who is willing and able to become involved in the patient’s health care decisions and to act in the patient’s best interest. The adult friend shall sign and date an acknowledgment form provided by the hospital or other health care facility in which the patient is located for placement in the patient’s records certifying that he or she meets such criteria.

(10) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care and any guardian for his ward.

(11) A person chosen by the interdisciplinary team, as defined in R.S. 28:451.2, to make recommendations on behalf of an individual with a developmental disability, as defined in R.S. 28:451.2. The interdisciplinary team shall exercise discretion in choosing, by majority vote, the family member, friend, or other person most familiar with the individual or most capable of making the decision at issue.

(12) A person chosen by an ad hoc team assembled by any interested person for the purpose of addressing the medical decision at issue for an individual with a developmental disability.

(a) This team shall consist of at least three persons familiar with the circumstances and needs of the individual, and shall contain representatives from at least two different services, educational or advocacy agencies serving individuals with developmental disabilities.

(b) The team shall make decisions by majority vote, and no one agency shall provide a majority of the members.

(c) The team shall exercise discretion in choosing the family member, friend, or other person most familiar with the individual or most capable of making the decision at issue.
decision at issue.

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.

C. If none of the persons listed under Paragraphs (A)(1) through (10) of this Section are reasonably available, then the patient’s attending physician shall have the discretion to provide or perform any surgical or medical treatment or procedures, including but not limited to an autopsy, and may also make decisions regarding continued services needed by the patient, including but not limited to approving the placement or transfer of the patient to another facility, without the consent of the patient or other person authorized to consent for the patient. Prior to taking such action, the attending physician shall document in the patient’s chart the facts that establish what medical decisions need to be made and why those decisions are needed without undue delay, as well as the steps taken to obtain consent from the patient or another person authorized by law to give consent and then obtain confirmation from another physician, preferably the patient’s primary care physician if he is not the attending physician, of the patient’s condition and the medical necessity for such action as is appropriate and consistent with the patient’s condition and which cannot be omitted without adversely affecting the patient’s condition or the quality of medical care rendered. The confirming physician shall personally examine the patient and document his assessment, findings and recommendations in the patient’s chart prior to the proposed surgical or medical treatment or procedures being performed. This Subsection shall not apply to an emergency governed by the provisions of R.S. 40:1299.54.

D. (1) When no contact persons are included in the individual’s records, in order to justify a finding that none of the authorized persons listed under Paragraphs (A)(1) through (9) of this Section are reasonably available, the patient’s attending physician shall document the following in the patient’s record:
(a) That he or a representative of the attending physician or facility has
inquired of, or has made a documented good-faith effort to inquire of, the
following entities regarding the existence of any advance directive made by the
patient and the availability of information that would enable the physician to
contact any person listed under Paragraphs (A)(2) through (9) of this Section:

(i) The Louisiana Secretary of State's Living Will Registry.

(ii) The patient's primary care physician or any known provider of
medical treatment or services received by the patient in the previous one
hundred and eighty days.

(iii) Any known facility in which the patient has resided in the last one
hundred and eighty days.

(b) That no advance directive or other information that would enable
the physician to contact an authorized individual to consent is available.

(2) When names of potentially authorized persons are listed in the
individual's records or are obtained through efforts under this Subsection, in
order to justify a finding that none of the authorized persons listed under
Paragraphs (A)(1) through (9) of this Section are reasonably available, the
patient's attending physician shall document in the patient's record the name
of each potentially authorized person that he or a representative of the
physician or facility attempted to contact, the manner and date of the attempted
contact, and the result of the attempted contact.

E. For an individual with a developmental disability, competency to act for
the purpose of this Section shall be determined in accordance with principles set
forth in R.S. 28:454.3, including capacity to consent and legally adequate consent.

F. Consent to surgical or medical treatment for an individual with a
developmental disability will be implied where an emergency, as defined in R.S.
40:1299.54, exists.

G. No hospital or other health care facility, physician, health care
provider, or other person or entity shall be subject to criminal prosecution or
civil liability or be deemed to have engaged in unprofessional conduct as to the
issue of consent only, based upon the reliance in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under Paragraphs (A)(1) through (9) of this Section, even if death or injury to the patient ensues except for liability for medical malpractice as to the provision or performance of the surgical or medical treatment, not with regard to the question of consent under R.S. 40:1299.39 et seq., or R.S. 40:1299.41 et. seq. Each hospital or other health care facility, physician, health care provider, or other person or entity, who acts in good-faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

H. Any physician attending or confirming, who, in accordance with Subsection C of this Section, provides or performs any surgical or medical treatment or procedure, including but not limited to an autopsy, or who makes decisions regarding continued services, including but not limited to approving the transfer or placement of the patient, without the consent of the patient or other person authorized to consent for the patient, shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the decision to perform, or the actual performance of, such treatment or procedure, or with regard to any decisions pertaining to continued services, including but not limited to decisions regarding the transfer or placement of the patient as to the issue of consent only, even if death or injury to the patient ensues, except for liability for medical malpractice as to the provision or performance of the surgical or medical treatment, not with regard to the question of consent under R.S. 40:1299.39 et seq., or R.S. 40:1299.41 et. seq. Furthermore, no hospital or other health care facility, health care provider or other person or entity acting under the direction of a physician shall be subject to criminal prosecution or civil liability, or be deemed to have engaged in unprofessional conduct as a result of any treatment, procedures, continued services, transfer, or placements that were performed in accordance with Subsection C of this Section, as to the issue of
consent only, even if death or injury to the patient ensues, except for liability for
medical malpractice as to the provision or performance of the surgical or
medical treatment, not with regard to the question of consent under R.S.
40:1299.39 et seq., or R.S. 40:1299.41 et. seq.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ____________