



**CALIFORNIA
HOSPITAL
ASSOCIATION**

*Providing Leadership in
Health Policy and Advocacy*

April 17, 2009

Route to Directors of: Admissions
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Skilled-Nursing
Social Services
Transplant Services

TO: Users of the 2009 *Consent Manual*

FROM: Lois J. Richardson, Vice President, Legal Publications and Education

SUBJECT: Major Changes in Consent Law — 2009

This memorandum highlights major changes in state and federal consent-related laws, all of which are discussed in detail in the 2009 *Consent Manual: A Reference for Consent and Related Health Care Law*. In addition, the manual contains many minor changes in the law; changes in names, addresses, phone numbers, and websites; additional resources; and clarifications that are too numerous to list. Each new law or revision is in effect now unless otherwise noted. Because laws often change after publication of the manual, CHA advises hospitals to consult their attorney when a legal question arises.

This memorandum should be kept with the 2009 *Consent Manual* for convenient reference. In addition, CHA recommends that a copy of this memorandum be routed to the people listed above so they are aware of the changes in the law that affect their areas of responsibility.

New Laws and Revisions

Changes have been made to several of the model forms in the manual. You can tell if a form has been changed in two ways: by referring to the date that appears in the bottom, outside corner of the page, or by looking at the List of Forms — forms with an asterisk following the title are new or have been revised.

Changes have been made throughout the manual to reflect the new numbering system implemented by The Joint Commission in its *Comprehensive Accreditation Manual for Hospitals*. In addition, the Centers for Medicare & Medicaid Services (CMS) revised two critical appendices to its *State Operations Manual*: Appendix A (Conditions of Participation for hospitals) and Appendix V (EMTALA). The *State Operations Manual* contains directions (*Interpretive Guidelines*) for surveyors regarding interpretation and enforcement of federal laws governing hospitals. Hospitals should comply with the directions in these appendices. They may be found on the CMS website at www.cms.hhs.gov/manuals/IOM/list.asp. Appropriate changes to the 2009 *Consent Manual* (particularly Chapters 1 and 9) have been made to reflect changes in the *Interpretive Guidelines*.

The following is a summary of major changes, listed by chapter:

- CHA Form 1-1 (Consent to Surgery or Special Procedure) and CHA Form 1-2 (Informed Consent to Surgery or Special Procedure) have been revised slightly to emphasize that the type of anesthesia and its risks and benefits should be discussed with the patient, to add the time (as well as the date) of the witness's signature on the form, and to clarify that the physicians performing the procedure are not employees or agents of the hospital. (*See Chapter 1.*)
- The Centers for Disease Control and Prevention updated several Vaccine Information Statements and created a new multivaccine information statement. These handouts must be provided to all patients (children and adults) prior to vaccination. (*See Chapter 4.*)
- California law has established a new form called the Physician Orders for Life-Sustaining Treatment (POLST) that terminally ill patients (and others) may complete regarding end-of-life treatment decisions. A discussion of this new law is included in the manual, as well as a copy of the POLST form. (*See Chapter 5.*)
- The Legislature has compiled a list of end-of-life options that patients must be told upon request. (*See Chapter 5.*)
- Hospitals must take specified actions if an enrollee of a noncontracting health plan presents to the emergency room. (*See Chapter 9.*)
- The coroner's duty to investigate unattended deaths has been revised to eliminate the requirement in the case of a patient who has been attended by a registered nurse working for a hospice program within 20 days before death. (*See Chapter 11.*)

- A new law has been enacted requiring hospitals to provide families of “brain dead” patients the opportunity to gather at the bedside prior to discontinuation of life support, with limited exceptions. In addition, the hospital must provide the patient’s family with a written statement of its policy in this regard. (*See Chapter 11.*)
- Chapters 13 and 17 have been revised to reflect that Protection and Advocacy, Inc., has changed its name to Disability Rights California.
- A discussion of the new federal requirement regarding accounting for disclosures through an electronic health record for treatment, payment and health care operations purposes has been added. This requirement takes effect on different dates for different providers, depending upon when they acquire their electronic health record system. The earliest effective date is January 1, 2011. A reminder to facilities to update their Notice of Privacy Practices and their forms related to Accounting of Disclosures when this requirement becomes effective for them has been added to the bottom of relevant sample forms. (*See Chapter 15.*)
- A discussion of the new federal requirement that providers honor a request for a special restriction on disclosure of information to a health plan if the services are paid in full out-of-pocket has been added. This requirement becomes effective February 17, 2010. A reminder to facilities to update their Notice of Privacy Practices and their forms related to Request for Special Restriction on Use or Disclosure of Protected Health Information on February 17, 2010, has been added to the bottom of relevant sample forms. (*See Chapter 15.*)
- Each fundraising communication sent on or after February 17, 2010, must provide the recipient an opportunity to opt out of receiving future communications. (*See Chapter 15.*)
- Federal law has increased the penalties for violations of the Health Insurance Portability and Accountability Act (HIPAA) and expanded enforcement of HIPAA to state attorneys general. (*See Chapter 16.*)
- A new standard for “minimum necessary” has been adopted for uses, disclosures or requests for protected health information. (*See Chapter 16.*)
- Both state and federal laws have been enacted to require the reporting of breaches of patient medical information to the patient and to government agencies. State reporting laws became effective January 1, 2009. Regulations governing the federal reporting requirement are expected by August 17, 2009, and will become effective a month after publication. (*See Chapter 16.*)
- California’s law regarding disclosure of mental health information was modified to permit disclosure of information regarding minors in the custody of the juvenile court to county social workers, probation officers and others. (*See Chapter 17.*)
- Alcohol- and drug-abuse counselors are now mandated child-abuse reporters. (*See Chapter 19.*)

- The California Emergency Management Agency has assumed the responsibilities of the former Office of Emergency Services (and even more formerly, the Office of Criminal Justice Planning) with respect to child physical and sexual abuse. (*See Chapter 19.*)
- California has enacted a new requirement to report CD4+ T-Cell test results. (*See Chapter 20.*)
- The discussion of reporting of adverse events has been clarified with respect to events reported in the “catchall” category. In addition, CHA has updated its form that hospitals may use to report adverse events to the California Department of Public Health, which has agreed to accept the form. (*See Chapter 20.*)
- New procedures are required for law enforcement, firefighters and emergency personnel who wish to compel involuntary HIV and hepatitis testing of specified criminal defendants and arrestees. (*See Chapter 23.*)

Consent Law Seminar

Educational seminars on consent and related health care law will be held April 28 in Pasadena, April 29 in Newport Beach, May 6 in Sacramento, May 7 in San Ramon, May 19 in Ontario and May 20 in San Diego. To register or for more information, visit the CHA website at www.calhospital.org, then “Education,” or call (916) 552-7637.

To order additional manuals or posters, or for more information regarding other CHA publications, visit the CHA website at www.calhospital.org, then “Publications.” Many of the forms and posters are available free on the website.

CHA members with questions regarding this memorandum or the content of the *Consent Manual* may contact me at (916) 552-7611 or lrichardson@calhospital.org.

LJR:
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