

April 28, 2017

Route to Directors of:

Admissions
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Pediatrics
Pharmacy
Prenatal Clinic
Privacy Office
Psychiatric Service
Risk Management
Skilled Nursing Facility
Social Services
Transplant Services

TO: CHA Members and *Consent Manual* Users

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

SUBJECT: Major Changes in Consent Law – 2017

Summary

This memorandum highlights major changes in state and federal consent-related laws, all of which are discussed in detail in the 2017 *Consent Manual: A Reference for Consent and Related Health Care Law*.

As always, the manual contains many changes in the law of lesser significance: changes in names, addresses, phone numbers, and websites; additional resources; and clarifications that are too numerous to list. Because laws often change after publication of the manual, CHA advises hospitals to consult their attorney when a legal question arises.

2017 Consent Manual Reorganization

The 2017 edition of the *Consent Manual* has been reorganized to help readers more easily find what they're looking for. Some chapters have been split in two, while others have been combined. In addition, detailed content on health information privacy law has been replaced by a chapter tailored to front-line staff, rather than the privacy officer or legal counsel. This new chapter focuses on everyday privacy questions that arise in the hospital or clinic setting; see CHA's *California Health Information Privacy Manual* for detailed content on health information privacy laws.

This memorandum should be kept with the 2017 *Consent Manual* for convenient reference. In addition, CHA recommends that a copy of this memorandum be routed to the people listed on this memo's first page so they are aware of the changes in the law that affect their areas of responsibility.

The included CD contains all of the forms, posters and appendixes found in the manual. Files are formatted as Adobe Acrobat PDFs and are organized in folders by resource type. Both English and Spanish forms are available on the CD. English forms are also found at the back of the manual.

New Laws and Revisions

A brief description of significant new laws and revisions to current law are included in this memorandum. Each new law or revision is in effect now, unless otherwise noted. For details about the requirements of each law, see the 2017 *Consent Manual*.

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 on the bottom, outside corner of the page, or by looking at the List of Forms found at the very beginning of the manual — forms with an asterisk following the title are new or have been revised.

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

- The U.S. Department of Health and Human Services Office for Civil Rights issued regulations specifying requirements under Section 1557 of the Affordable Care Act, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability. The regulations address: giving patients notice of nondiscrimination; interpreter and translation services; LGBTQ issues; auxiliary aids; and grievance procedures. These regulations became effective July 16, 2016. (*See chapter 1.*)
- A procedure has been adopted in state law regarding sterilization of an inmate. (*See chapter 5.*)
- The detailed chapters on health information privacy law have been replaced by a chapter tailored to front-line staff, focusing on everyday privacy questions that arise in the hospital or clinic setting. New content has been added addressing photographing and filming patients, searching patients and their belongings, audio recording, law enforcement body cameras, and consumer wearables. (*See chapter 8.*)
- A brief discussion of outpatient registration forms has been added to the manual. (*See chapter 11.*)
- State law now requires that patients scheduled for a service in a hospital-based outpatient clinic be given a notice if that service is also available in another location that is not hospital-based. (*See chapter 11.*)
- A description of the Telephone Consumer Protection Act and sample language to use when obtaining a patient's phone number is included in this year's manual. (*See chapter 11.*)
- State and federal law have adopted requirements to notify observation patients about their status. The federal law became effective March 8, 2017; the state law became effective Jan. 1, 2017. (*See chapter 12.*)

- State law has been revised to require a hospital to complete the state form “Health Facility Minor Release Report (AD 22)” upon request of a birth parent, even if the hospital doesn’t think the form needs to be completed. (*See chapter 12.*)
- The state is transitioning its genetic testing of newborns to an electronic reporting system. These changes are reflected in the manual. (*See chapter 13.*)
- State law has been revised to emphasize that an employer’s internal child abuse reporting policy may not direct employees to allow their supervisor to file or process a mandated report under any circumstances. (*See chapter 17.*)
- The list of communicable diseases that hospitals, physicians and labs are required to report to the local public health officer was revised effective May 24, 2016. (*See chapter 18.*)
- Effective Jan. 1, 2019, a pathologist diagnosing cancer must report to the California Cancer Registry. (*See chapter 18.*)
- A California ballot initiative legalized recreational marijuana. Conforming changes have been made to the manual. (*See chapter 20.*)

Consent Law Seminars

Educational seminars on consent law will be held April 24 in San Diego; April 25 in Ontario; May 9 in Fresno; May 16 in Irvine; May 17 in Glendale; May 31 in Sacramento; and June 1 in San Ramon. To register, or for more information, visit the CHA website at www.calhospital.org/consent-law, or call (916) 552-7637.

To order additional manuals or posters, visit the CHA website at www.calhospital.org/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