



CALIFORNIA
HOSPITAL
ASSOCIATION

*Providing Leadership in
Health Policy and Advocacy*

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- Risk Management
- Social Services

TO: CHA Members and *Consent Manual* Users

FROM: Lois J. Richardson, Vice President and Legal Counsel

SUBJECT: Major Changes in Consent Law – 2020

Summary

This memorandum highlights major changes in state and federal consent-related laws, all of which are discussed in detail in the *2020 Consent Manual*.

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.

This memorandum should be kept with the *2020 Consent Manual* for convenient reference. In addition, CHA recommends that a copy of this memorandum be routed to the people listed in the upper right-hand corner of this page so they are aware of the changes in the law that affect their areas of responsibility.

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 *2020 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.

Following is a summary of major changes, listed by chapter.

- Hospitals must give patients written Information on how to file a complaint with the Department of Fair Employment and Housing as well as the Medical Board of California. CHA's model patient rights document, CHA Appendix 1-A, has been updated to fulfill these requirements. (*See chapter 1.*)
- If a hospital, clinic, skilled-nursing facility or other health facility receives a written allegation of sexual abuse or sexual misconduct made by a patient or patient representative against a physician, nurse, or other healing arts licensee, the facility must report it to the appropriate licensing board. (*See chapter 1.*)
- A discussion has been added of the appellate court decision involving consent for unrepresented patients in skilled nursing facilities. (*See chapter 3.*)
- Information about the new medical exemption process for vaccinations for children attending public schools has been added. (*See chapter 5.*)
- The law requiring a prescriber who prescribes certain drugs to offer the patient a prescription for naloxone hydrochloride or similar drug has been revised. (*See chapter 5.*)
- Gamete banks must now collect certain information from sperm and ova donors. (*See chapter 5.*)
- California has adopted a “Bill of Rights for Research Participants Undergoing Oocyte Retrieval,” a required consent process and new laws regarding compensation for oocyte retrieval. (*See chapter 10.*)
- The Medicare Condition of Participation for discharge planning has been revised effective Nov. 30, 2019. (*See chapter 12.*) CHA members may access a related webinar recording from the On-Demand page of CHA’s website: www.calhospital.org/on-demand-learning.
- California requires hospitals to offer parents the opportunity to sign a voluntary declaration of parentage (formerly a “declaration of paternity”) where a baby is born to a mother (married or unmarried) who conceived through assisted reproduction. (*See chapter 13.*)
- The Centers for Medicare & Medicaid Services (CMS) repealed its previous requirement for a hospital to perform an autopsy in all cases of unusual deaths and of medical-legal and educational

interest. CMS noted that these autopsies are often within the purview of the coroner or medical examiner. (See chapter 14.)

- The Department of Health Care Services updated Forms 1801, 1802, 1808, and 1809 regarding involuntary mental health treatment, effective December 2019. (See chapter 15.)
- State law regarding Disability Rights California's authority to access facilities and records has been expanded. (See chapter 16.)
- The Department of Justice form to be given to certain mental health patients regarding gun possession has been updated to reflect a lifetime ban for some patients. In addition, hospitals are no longer required (in fact, are no longer permitted) to help a patient submit a form requesting a hearing to regain the legal ability to possess a firearm. (See chapter 16.)
- Hospitals that perform sexual assault and other medical evidentiary exams are required to implement a system, by January 1, 2021, to maintain exam reports in a manner that facilitates their release only as required or authorized by law. (See chapter 17.)
- The state's list of reportable diseases has been updated. In addition, the federal list of diseases that trigger a duty to notify first responders has been updated to include COVID-19. (See chapter 18.)
- The Centers for Medicare & Medicaid Services has moved to an electronic reporting system for reports of deaths associated with the use of restraint or seclusion. (See chapter 19.)

Consent Law Webinars: CHA Members may access recordings of the *Consent and Related Health Care Law* webinars held May 13, 19, and 27 of this year in the On-Demand Learning page of the CHA website: www.calhospital.org/on-demand-learning.

Forms and Appendices: Forms and appendices are included in the back of the manual; electronic copies of forms and handouts are available to CHA members at www.calhospital.org/free-resources.

CHA members with questions regarding this memorandum or the content of the *Consent Manual* may contact me at IrRichardson@calhospital.org.

LJR