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Code: Section:

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HEALTH AND SAFETY CODE - HSC

DIVISION 7. DEAD BODIES [7000 - 8030] (*Division 7 enacted by Stats. 1939, Ch. 60.*)

PART 1. GENERAL PROVISIONS [7000 - 7355] (*Part 1 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 3.55. Organ and Tissue Donation Information and Procedures [7158 - 7158.3] (*Chapter 3.55 added by Stats. 1998, Ch. 457, Sec. 5.*)

7158. (a) The Controller shall prepare, or cause to be prepared, an organ donor information brochure for insertion in all payroll warrants issued by the Controller for the March 1999 pay period, and for every March pay period thereafter, in recognition of National Organ and Tissue Awareness Week, which occurs in April of each year.

(b) In lieu of developing an organ donor brochure pursuant to subdivision (a), the Controller may use a brochure developed by a regional organ donor organization. The Controller shall screen for appropriateness for wide distribution.

(*Added by Stats. 1998, Ch. 457, Sec. 5. Effective January 1, 1999.*)

7158.1. (a) As a part of its ongoing audit and review process, the Licensing and Certification Division of the State Department of Health Services shall audit for the existence of organ and tissue procurement procedures for all inpatient hospital facilities. The audit shall include a determination of whether these procedures are in place in the facility, whether the procedures are operational and functioning, and whether the procedures are being used. The department shall not be required to audit for the effectiveness of the procedures. No additional audits shall be required for purposes of this section. Instead, the department shall add an organ and tissue audit element to its regular ongoing audits of inpatient facilities.

(b) For purposes of this chapter, "organ and tissue procurement procedures" shall include protocols required to be developed pursuant to Section 7184. The audit criteria shall, at a minimum, include all of the following:

- (1) That the protocols have been developed.
- (2) That the protocols are operational.
- (3) That notification requirements to next of kin or other individuals as set forth in Section 7151 and to organ procurement organizations are within a timeframe that is consistent with the maintenance of the organs for the purpose of transplantation.

(c) The absence of any of the required organ and tissue procurement procedures at any facility shall be noted by the division, and included in a written audit report or site review summary. In the event that an audit or facility review is conducted in conjunction with review by a national accreditation agency, and that agency prepares a report, the department shall request that the information required by this section with respect to organ and tissue procurement procedures be included in the report prepared by the national accreditation agency. In this event, the department shall not be required to prepare a separate report.

(*Added by Stats. 1998, Ch. 457, Sec. 5. Effective January 1, 1999.*)

7158.2. Every health care service plan contract that is issued, amended, delivered, or renewed on or after July 1, 1999, shall provide, upon enrollment and annually thereafter, a notice to subscribers in the evidence of coverage, health plan newsletter, or any direct plan communication to subscribers, information regarding organ donation options. This notice shall inform subscribers of the societal benefits of organ donations and the method whereby they may elect to be an organ or tissue donor.

(*Added by Stats. 1998, Ch. 457, Sec. 5. Effective January 1, 1999.*)

7158.3. (a) The following definitions shall apply for purposes of this section:

- (1) "Cosmetic surgery" means surgery that is performed to alter or reshape normal structures of the body in order to improve appearance.

(2) "Donee" means a hospital, as defined in paragraph (12) of subdivision (a) of Section 7150.10, or an organ procurement organization, as defined in paragraph (16) of subdivision (a) of Section 7150.10, or a tissue bank licensed pursuant to Chapter 4.1 (commencing with Section 1635) of Division 2.

(3) "Reconstructive surgery" means surgery performed to correct or repair abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(A) To improve function.

(B) To create a normal appearance, to the extent possible.

(b) For purposes of accepting anatomical gifts, as defined in paragraph (3) of subdivision (a) of Section 7150.10, a donee shall do all of the following:

(1) Revise existing informed consent forms and procedures to advise a donor or, if the donor is deceased, the donor's representative, that tissue banks work with both nonprofit and for-profit tissue processors and distributors, that it is possible that donated skin may be used for cosmetic or reconstructive surgery purposes, and that donated tissue may be used for transplants outside of the United States.

(2) The revised consent form or procedure shall separately allow the donor or donor's representative to withhold consent for any of the following:

(A) Donated skin to be used for cosmetic surgery purposes.

(B) Donated tissue to be used for applications outside of the United States.

(C) Donated tissue to be used by for-profit tissue processors and distributors.

(3) A donee shall be deemed to have complied with paragraph (2) by designating tissue that has been donated with specific restrictions on its use. Once the donee transfers the tissue to a separate entity, the donee's responsibility for compliance with any restrictions on the tissue ceases.

(4) The donor may recover, in a civil action against any individual or entity that fails to comply with this subdivision, civil penalties to be assessed in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000), plus court costs, as determined by the court. A separate penalty shall be assessed for each individual or entity that fails to comply with this subdivision. Any civil penalty provided under this paragraph shall be in addition to any license revocation or suspension, if appropriate, authorized under subdivision (c).

(5) If the consent of the donor or donor's representative is obtained in writing, the donee shall offer to provide the donor or donor's representative with a copy of the completed consent form. If consent is obtained by telephone, the donee shall advise the donor or donor's representative that the conversation will be audio recorded for verification and enforcement purposes, and shall offer to provide the donor or donor's representative with a written copy of the recorded telephonic consent form.

(c) Violation of this section by a licensed health care provider constitutes unprofessional conduct.

(d) This section shall not apply to the removal of sperm or ova pursuant to Section 2260 of the Business and Professions Code.

(Amended by Stats. 2015, Ch. 303, Sec. 300. (AB 731) Effective January 1, 2016.)