CA

73524 Informed Consent Requirements

(a)

It is the responsibility of the attending licensed healthcare practitioner acting within the scope of his or her professional licensure, to determine what information a reasonable person in the patient's condition and circumstances would consider material to a decision to accept or refuse a proposed treatment or procedure. Information that is commonly appreciated need not be disclosed. The disclosure of the material information and obtaining informed consent shall be the responsibility of the licensed healthcare practitioner who, acting within the scope of his or her professional licensure, performs or orders the procedure or treatment for which informed consent is required.

(b)

The information material to a decision concerning the administration of a psychotherapeutic drug or physical restraint, or the prolonged use of a device that may lead to the inability of the patient to regain use of a normal bodily function shall include at least the following: (1) The reason for the treatment and the nature and seriousness of the patient's illness. (2) The nature of the procedures to be used in the proposed treatment including their probable frequency and duration. (3) The probable degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment. (4) The nature, degree, duration and the probability of the side effects and significant

risks, commonly known by the health professions. (5) The reasonable alternative treatments and risks, and why the health professional is recommending this particular treatment. (6) That the patient has the right to accept or refuse the proposed treatment, and if he or she consents, has the right to revoke his or her consent for any reason at any time.

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The reasonable alternative treatments and risks, and why the health professional is recommending this particular treatment.

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That the patient has the right to accept or refuse the proposed treatment, and if he or she consents, has the right to revoke his or her consent for any reason at any time.

(c)

Before initiating the administration of psychotherapeutic drugs, or physical restraints, or the prolonged use of a device that may lead to the inability to regain use of a normal bodily function, facility staff shall verify that the patient has given

informed consent to the proposed treatment or procedure. The facility shall also ensure that all decisions concerning the withdrawal or withholding of life sustaining treatment are documented in the patient's health record.

(d)

This section shall not be construed to require obtaining informed consent each time a treatment or procedure is administered unless material circumstances or risks change.

(e)

There shall be no violation for initiating treatment without informed consent if there is documentation within the patient's health record that an emergency exists where there is an unanticipated condition in which immediate action is necessary for preservation of life or the prevention of serious bodily harm to the patient or others or to alleviate severe physical pain, and it is impracticable to obtain the required consent, and provided that the action taken is within the customary practice of licensed healthcare practitioners of good standing acting within the scope of their professional licensure in similar circumstances.

(f)

Notwithstanding Sections 73523(a)(5) and 73524(c)(4), disclosure of the risks of a proposed treatment or procedure may be withheld if there is documentation of one of the following in the patient's health record: (1) That the patient or patient's representative specifically requested that he or she not be informed of the risk of the recommended treatment or procedure. This request does not waive the requirement for providing the other material information concerning the treatment or procedure. (2) That the licensed healthcare practitioner acting within the scope of his or her professional licensure relied upon objective facts, as documented in the health record, that would demonstrate to a reasonable person

that the disclosure would have so seriously upset the patient that the patient would not have been able to rationally weigh the risks of refusing to undergo the recommended treatment and that unless inappropriate a patient's representative gave informed consent as set forth herein.

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(2)

That the licensed healthcare practitioner acting within the scope of his or her professional licensure relied upon objective facts, as documented in the health record, that would demonstrate to a reasonable person that the disclosure would have so seriously upset the patient that the patient would not have been able to rationally weigh the risks of refusing to undergo the recommended treatment and that unless inappropriate a patient's representative gave informed consent as set forth herein.

(g)

A general consent provision in a contract for admission shall only encompass consent for routine nursing care or emergency care. Routine nursing care, as used in this section, means a treatment or procedure that does not require informed consent as specified in Section 73524(c)(1) through (6) or that is determined by the licensed healthcare practitioner acting within the scope of his or her professional licensure not to require the disclosure of information material to the individual patient. Routine nursing care includes, but is not limited to, care that does not require the order of a licensed healthcare practitioner acting within the scope of his or her professional licensure. This section does not preclude the use

of informed consent forms for any specific treatment or procedure at the time of admission or at any other time. All consent provisions or forms shall indicate that the patient or incapacitated patient's representative may revoke his or her consent at any time.

(h)

If a patient or his or her representative cannot communicate with the licensed healthcare practitioner acting within the scope of his or her professional licensure because of language or communication barriers, the facility shall arrange for an interpreter. (1) An interpreter shall be someone who is fluent in both English and the language used by the patient and his or her legal representative, or who can communicate with a deaf person, if deafness is the communication barrier. (2) When interpreters are used, documentation shall be placed in the patient's health record indicating the name of the person who acted as the interpreter and his or her relationship to the patient and to the facility.

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