

## **SB 481 (PAN): LONG TERM HEALTH FACILITIES: INFORMED CONSENT**

**POSITION:** The Chamber's Healthcare Committee voted to SUPPORT SB 481 on April 12, 2017.

**STATUS:** SB 481 was introduced by Senator Richard Pan on February 16, 2017. It was amended on April 6<sup>th</sup>, and is expected to be heard in Assembly Health Committee on April 19.

### **AT-A-GLANCE**

Requires that before implementing a medical intervention that requires informed consent for a resident that lacks the capacity to make a decision and there is no other legally authorized person to make such decisions, the physician, skilled nursing facility or intermediate care facility to notify the resident orally and in writing that it was determined that the resident lacks capacity and other information.

### **SUMMARY**

Requires that before implementing a medical intervention that requires informed consent for a resident that lacks the capacity to make a decision and there is no other legally authorized person to make such decisions, the physician, skilled nursing facility or intermediate care facility to notify the resident orally and in writing that it was determined that the resident lacks capacity and other information.

Specifically, the facility must communicate, orally and in writing, the following:

- The attending physician has determined that the resident lacks the capacity to make healthcare decisions; and
- The facility has not been able to locate a person with legal authority to make medical treatments, or next of kin who is able and willing to make health care decisions; and
- The medical intervention recommended or prescribed that requires informed consent and information about the person recommending or prescribing said medical intervention; and
- The interdisciplinary team has reviewed the recommendations, and will continue to oversee any additional recommended prescribed interventions unless or until a person with legal authority and willingness come forward; and
- The right of the resident to challenge the determinations in a judicial proceeding.

### **ANALYSIS**

The author's office cites an Alameda County superior court judge issue that identified Health & Safety Code 1418.8 unconstitutional as the impetus for SB 481. The code was originally enacted to ensure that patients in skilled nursing facilities are taken care of in the event that they lack the capacity to make health care decisions and have no legally authorized family member or other individual to make decisions for them. Consequently, 1418.8 established a process to obtain informed consent via an interdisciplinary team.

To bring the language in the Health & Safety code into alignment with the state constitution, the five pieces of information were included above. Should the matter not be resolved, it will force patients in skilled nursing facilities without capacity or other representation to potentially not be treated, transferred to acute care and remain in acute care unnecessarily, or be treated illegally opening up vulnerabilities for litigation.