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CALIFORNIA MINOR CONSENT LAWS – MENTAL HEALTH SERVICES: Minor Consent Services and Parents Access Rules*

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p style="text-align: center;">ASSESSMENT*</p> <p>*Assessment means the evaluation necessary for an attending professional to assess whether a minor meets criteria (1) and (2) of the minor consent statute, Family Code § 6924, cited at right.</p>	<p>Two statutes give minors the right to consent to mental health treatment. If a minor meets the criteria under either statute, the minor may consent to his or her own treatment. If the minor meets the criteria under both, the provider may decide which statute to apply. There are differences between them. See endnote ** for more on these differences:</p> <p style="text-align: center;"><u>Family Code § 6924</u></p> <p>“A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis or to residential shelter services, if both of the following requirements are satisfied: (1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services. AND (2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.” Cal. Fam. Code § 6924.</p> <p style="text-align: center;"><u>Health & Safety Code § 124260</u></p> <p>“[A] minor who is 12 years of age or older may consent to [outpatient] mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services.” Health & Saf. Code § 124260.</p>	<p><i>Parent Access/Confidentiality Obligation</i></p> <p>If the minor consents or could have consented to care, the provider only may share the minor’s medical information with parents or guardian with the signed authorization of the minor. Cal. Health & Saf. Code §§ 123110(a), 123115(a); Cal. Civ. Code § 56.10(b)(7), 56.11(c); 45 C.F.R. 164.502(g)(3); 45 C.F.R. 164.508(a).</p> <p><i>Discretion to Inform Parents without Minor’s Authorization?</i></p> <p>The health care provider is required to involve a parent or guardian in the minor’s outpatient treatment unless the health care provider decides that such involvement is inappropriate. This decision and any attempts to contact parents must be documented in the minor’s record. When services are being provided under Health and Safety Code § 124260, providers must consult with the minor before making the determination concerning parental involvement. Involving parents in treatment will necessitate sharing certain confidential information; however, having them participate does not mean parents have a right to access confidential records. Providers should attempt to honor the minor’s right to confidentiality to the extent possible while still involving parents in treatment. Cal. Fam. Code § 6924; 45 C.F.R. 164.502(g)(3)(ii); Health & Saf. Code § 124260(c).</p> <p><i>Discretion to Inform Other Providers without Minor’s Authorization?***</i></p> <p>In most cases, the health care provider may share outpatient mental health information for treatment or referral purposes with other qualified professionals treating the client, without need of an authorization. However, the provider cannot share psychotherapy notes without written client authorization. For a definition of psychotherapy notes, see 45 C.F.R. 164.501 and speak to your own counsel. 45 C.F.R. 164.502(a)(1)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Welf. & Inst. Code § 5328(a). Compare Cal Civ. Code §§ 56.10(c)(1); 56.104.</p>
<p style="text-align: center;">OUTPATIENT COUNSELING</p>		
<p style="text-align: center;">OUTPATIENT TREATMENT*</p> <p>* The statute does not define “treatment.” However, treatment in this context does NOT include convulsive therapy, psychosurgery or psychotropic drugs.</p>		

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p>PSCYHOTROPIC MEDICATIONS*</p> <p>*"psychotropic medication" means those medications prescribed to affect the central nervous system to treat psychiatric disorders or illnesses.</p>	<p>Only with parent or guardian consent, except a guardian cannot consent to experimental medications for a minor. Cal. Probate Code § 2356.</p>	<p><i>Parent Access/Confidentiality Obligation</i> If the minor did not and could not have consented to care, a parent or guardian usually has the right to access the minor's medical information. To share information with others, the provider usually must have a signed authorization from the parent/guardian. Cal. Health & Saf. Code §§ 123105(e), 123110(a); Cal. Welf. & Inst. Code § 5328(d); Cal. Civ. Code §§ 56.10, 56.11. However, there are exceptions.</p> <p><i>Discretion to Refuse Access to Parents?</i> The parent/guardian of a minor shall not be entitled to inspect or obtain copies of the minor's patient records where the health care provider determines that access to the patient records requested by the parent/guardian would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith. Cal. Health & Saf. Code § 123115(a)(2). <i>See also</i> 45 C.F.R. 164.502(g)(5).</p>
<p>INPATIENT TREATMENT</p>	<p>Only with parent or guardian consent, except a guardian cannot place a minor in a mental health facility against the minor's will. Involuntary placement can only be obtained through a 5150 or 5350 proceeding. This does not preclude a guardian from placing a ward in a state hospital under a WIC 6000 application. Cal. Probate Code § 2356.</p>	<p><i>Discretion to Inform Other Providers?*</i> In most cases, the health care provider may share outpatient mental health information for treatment or referral purposes with other qualified professionals treating the client, without need of an authorization. However, the provider cannot share psychotherapy notes without written authorization from the parent or guardian. For a definition of psychotherapy notes, see 45 C.F.R. 164.501 and speak to your own counsel. When a minor has been in an inpatient facility, a professional employed by the inpatient facility may share information with a professional employed outside the facility, without need of an authorization, if that professional has the medical or psychological responsibility for the patient's care. In other cases, an authorization from the parent or guardian is necessary to release the information. Cal. Welf. & Inst. Code § 5328(a),(d); 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2). <i>Compare</i> Cal. Civ. Code §§ 56.10(c)(1); 56.104.</p>
<p>CONVULSIVE THERAPY for MINORS up to 15 years old</p> <p>(see page 5 for rules regarding convulsive therapy for 16 and 17 year old minors)</p>	<p>Convulsive treatment shall not be performed on a minor under 12 years of age. Cal. Welf. & Inst. Code §§ 5326.8</p> <p>Minors 12-15 years of age may be administered convulsive treatment only if it is an emergency situation and is deemed a lifesaving treatment and other criteria are met. If the minor is able to give informed consent, the treatment cannot be performed if the minor refuses. Cal. Welf. & Inst. Code §§ 5326.8, 5326.85</p> <p>For minors 12-15 years of age parent consent is also necessary. A guardian cannot consent to convulsive therapy. Cal. Probate Code § 2356.</p>	<p><i>Discretion to Inform Other Providers?*</i> In most cases, the health care provider may share outpatient mental health information for treatment or referral purposes with other qualified professionals treating the client, without need of an authorization. However, the provider cannot share psychotherapy notes without written authorization from the parent or guardian. For a definition of psychotherapy notes, see 45 C.F.R. 164.501 and speak to your own counsel. When a minor has been in an inpatient facility, a professional employed by the inpatient facility may share information with a professional employed outside the facility, without need of an authorization, if that professional has the medical or psychological responsibility for the patient's care. In other cases, an authorization from the parent or guardian is necessary to release the information. Cal. Welf. & Inst. Code § 5328(a),(d); 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2). <i>Compare</i> Cal. Civ. Code §§ 56.10(c)(1); 56.104.</p>

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p>DRUG COUNSELING by federally assisted drug treatment program*</p> <p>This section does not grant a minor the right to refuse medical care and counseling for a drug or alcohol related problem when the minor's parent or guardian consents for that treatment. Cal. Fam. Code § 6929(f).</p> <p>*An individual, program or facility is federally assisted if:</p> <ol style="list-style-type: none"> 1. The individual, program, or facility is authorized, certified, licensed or funded in whole or in part by any department of the federal government. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare. 42 C.F.R. §2.12; AND 2. The individual or program: <ol style="list-style-type: none"> (1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR (2) Is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR (3) Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral. 42 C.F.R. §2.11; 42 C.F.R. §2.12. 	<p>“A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem.” Cal. Fam. Code §6929(b).</p>	<p><i>Parent Access/Confidentiality Obligations</i> If the minor consents to care, the provider only may share the minor's medical information with parents with the signed consent of the minor. Cal. Health & Saf. Code §§ 123110(a), 123115(a); Cal. Civ. Code §§ 56.10(b)(7), 56.11(c); 42 C.F.R. 2.14; 45 C.F.R. 164.502(g)(3)(i)(A); 45 C.F.R. 164.508(a).</p> <p><i>Discretion to Inform Parents without Minor's Consent?</i> Providers may not disclose information to parents without a minor's written authorization. However, an exception allows a program to share with parents if the program director determines the following three conditions are met: (1) that the minor's situation poses a substantial threat to the life or physical well-being of the minor or another; (2) that this threat may be reduced by communicating relevant facts to the minor's parents; and (3) that the minor lacks the capacity because of extreme youth or a mental or physical condition to make a rational decision on whether to disclose to her parents. 42. C.F.R. 2.14.</p> <p><i>Discretion to Inform Other Providers without Minor's Consent?</i> The health care provider only may share medical information with providers employed by the same program or with an entity having direct administrative control, and only in connection with duties arising out of the provision of diagnosis, treatment or referral. Providers also may release information to other medical professionals to meet a bona fide emergency. 42 U.S.C. 290dd-2; 42 C.F.R. 2.12.</p>

SERVICE/TREATMENT	CONSENT LAW	LIFORMING/CONFIDENTIALITY OBLIGATIONS
<p style="text-align: center;">DRUG COUNSELING* By individuals, programs or facilities that are not “federally assisted”</p> <p>This section does not grant a minor the right to refuse medical care and counseling for a drug or alcohol related problem when the minor’s parent or guardian consents for that treatment. Cal. Fam. Code § 6929(f).</p>	<p>“A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem.” Cal. Fam. Code § 6929(b).</p>	<p><i>Parent Access/Confidentiality Obligations</i> If the minor consents to care, the provider only may share the minor’s medical information with the signed consent of the minor. Cal. Health & Saf. Code §§ 123110(a), 123115(a); Cal. Civ. Code §§ 56.10(b)(7), 56.11(c); 45 C.F.R 164.502(g)(3)(i)(A); 45 C.F.R. 164.508(a).</p> <p><i>Discretion to Inform Parents without Minor’s Consent?</i> The health care provider is required to involve a parent or guardian in the minor’s treatment unless the health care provider decides that such involvement is inappropriate. This decision and any attempts to contact parents must be documented in the minor’s record. Involving parents in treatment will necessitate sharing certain confidential information; however, having them participate does not mean parents have a right to access confidential records. Providers should attempt to honor the minor’s right to confidentiality to the extent possible while still involving parents in treatment. Cal. Fam. Code § 6929(c); 45 C.F.R. 164.502(g)(3)(ii).</p> <p><i>Discretion to Inform Providers without Authorization?</i> Records maintained in connection with drug abuse treatment or prevention efforts conducted, regulated, or directly or indirectly assisted by the state Department of Alcohol and Drug programs cannot be shared with providers not employed by the same treatment or prevention program except to meet an emergency. Cal. Health & Saf. Code § 11977. For programs that are not state assisted, the health care provider may share medical information for treatment or referral services with other providers. However, the provider cannot share psychotherapy notes without written client authorization. For a definition of psychotherapy notes, see 45 C.F.R 164.501 and speak to your own counsel. 45 C.F.R. 164.502(a)(1)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Civ. Code § 56.10.</p>

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p>CONVULSIVE THERAPY for 16 and 17 year old minors</p>	<p>Minors who are 16 and 17 years old must give voluntary informed consent for convulsive treatment. Many other conditions must be met before therapy can be given. Cal. Welf. & Inst. Code §§ 5326.8; 5326.75; 5325(f).</p>	<p>Parent Access/Confidentiality Obligations If the minor consents or could have consented to care, the provider only may share the minor’s medical information with parents with the signed authorization of the minor. Cal. Health & Saf. Code §§ 123110(a), 123115(a); Cal. Civ. Code § 56.10(b)(7), 56.11(c); 45 C.F.R. 164.502(g)(3); 45 C.F.R. 164.508(a).</p>
<p>GENERAL MEDICAL CARE for Emancipated Minors</p>	<p>An emancipated minor may consent to medical, dental and psychiatric care. Cal. Fam. Code § 7050(e).</p> <p>“A person under the age of 18 years is an emancipated minor if any of the following conditions is satisfied: (a) The person has entered into a valid marriage, whether or not the marriage has been dissolved. (b) The person is on active duty with the armed forces of the United States. (c) The person has received a declaration of emancipation” from a court. Cal. Fam. Code § 7002.</p>	<p>Discretion to Inform Parents without Minor’s Consent? The health care provider has no discretion to inform parents without the minor’s signed authorization.</p> <p>Discretion to Inform Other Providers without Minor’s Consent? In most cases, the health care provider may share medical information for treatment or referral purposes with other qualified professionals treating the client, without an authorization. However, the provider cannot share psychotherapy notes without written client authorization. For a definition of psychotherapy notes, see 45 C.F.R. 164.501 and speak to your own counsel. 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Welf. & Inst. Code § 5328(a); Cal. Civil Code § 56.10. <i>But see</i> Cal. Civil Code § 56.104.</p>

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NOTES:

- * There are many confidentiality and consent rules. Different rules apply in different contexts. This chart addresses the rules that apply when minors live with their parents or guardians. It does not address the rules that apply when minors are under court jurisdiction or in other special living situations. Further, the confidentiality section focuses on parent and provider access. It does not address when other people or agencies may have a right to access otherwise confidential information.
- ** In addition to having slightly different eligibility criteria, there are other small differences between Health and Safety Code §124260 and Family Code § 6924. For example, the two laws both allow “professional persons” to deliver minor consent services but the two laws define “professional person” differently. Also, there is a funding restriction that applies to Health and Safety Code §124260 but not to Family Code § 6924. See Cal. Family Code 6924, Health & Saf. Code § 124260 and Welf. & Inst. Code § 14029.8 and look for more information on www.teenhealthlaw.org.
- *** This rule applies to information obtained while providing Lanterman Petris Short (LPS) services. Many if not most publicly funded mental health services as well as most inpatient care are LPS services. A complete list of LPS services is found at Health & Safety § 5328. For other services, Cal. Civil Code § 56 et al may apply.