

Minor Consent and Confidentiality for Sexual Health Services in California Webinar Questions 10/25/2023

*While our speaker was able to answer some questions it is in her option to seek advice from your own legal counsel for the best course of action.

Foster Youth

- 1. What resource would you give a teen if they stated that their rights were violated? For example, the foster youth who resides in a foster care facility and have had their contraceptives taken away.**

Visit the [Reproductive Health Equity Project \(RHEP\)](#), a project of the National Center for Youth Law, for information on the reproductive rights of youth in foster care.

If a youth believes their rights have been violated, they have a few options. If they feel comfortable doing so, they can speak with their dependency attorney or their social worker. They also can reach out to the [California foster care ombudsperson's office](#) to ask questions or file a complaint.

- 2. Does the Foster Friendly Tool Kit include the trauma sensitive items mentioned in the presentation?**

Yes, the [Foster Friendly Toolkit](#) includes the tools mentioned in the presentation.

- 3. When do you need a court order for a foster child's course of care? Only if it is general health care?**

This [Consent to Treatment for Minors in Foster Care](#) chart from the National Center for Youth Law summarizes who may consent for care for youth in foster care in different contexts and addresses when a court order may or must be obtained to authorize medical care.

- 4. For IUD consent, do we need to collect consent from both foster care and the minor patient?**

No. Minors in foster care have the same minor consent rights as other adolescent Californians. That means they consent to contraception, including IUDs, on their own behalf, and no one else can consent to or refuse that care for them. [CDSS All-County Letter 16-82](#) states:

Minors in foster care have “[t]he right to consent to or decline medical care (without need for consent from a parent, caregiver, guardian, social worker, probation officer, court, or authorized representative) for:

- a) The prevention or treatment of pregnancy, including contraception, at any age, (except sterilization).
- b) An abortion, at any age.
- c) Diagnosis and treatment of sexual assault, at any age.
- d) The prevention, diagnosis, and treatment of STIs, at age 12 or older.”

5. Can you explain more about the foster parent consent for contraception?

Foster parents never consent (or decline) contraception on behalf of minors in foster care. Minors in foster care have the same minor consent rights as other adolescent Californians. That means they consent to contraception, including IUDs, on their own behalf, and no one else can consent to or refuse that care. [CDSS All-County Letter 16-82](#) states:

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Pregnant Youth

6. Is there a particular threshold age when pregnancy is an automatic referral to CPS? I had heard 13 and under.

Mandated reporters of child abuse must report sexual intercourse with a minor based on the minor and their partner’s age in a few circumstances. The chart, [When Sexual Intercourse is Deemed Child Abuse in California](#) provides a quick summary. The chart will be updated by January 2024, so please check back at teenhealthlaw.org then for the most updated version.

7. Is a parenting minor able to consent for care (not sexual health specific) for their own child, even if they cannot consent to all care for themselves?

Yes. As a general rule, a parenting minor may consent for their own child’s health care just as would an adult parent.

Insurance/ Electronic Medical Records Related

8. Recommendations for managing disclosures for billing for confidentially provided adolescent sexual health services.

The California Confidentiality of Medi-Cal Information Act (Civil Code 56.107) says that "health care service plans," including Medi-Cal managed care plans, are prohibited from doing two things:

- 1) First, they cannot require the signature of the “owner” of an insurance plan to submit a claim for sensitive services if the individual (patient) has a right to consent to care on their own behalf.
- 2) Second, the law says that the insurance company must direct any communications regarding sensitive services directly to the individual patient, as follows:
 - a) If the patient has given the insurance company an alternative mailing address, email address, or telephone number, the health care service plan shall send or make all communications related to the receipt of

sensitive services to the alternative mailing address, email address, or telephone number designated.

- b) If the patient has not designated an alternative mailing address, email address, or telephone number, the health care service plan shall send or make all communications related to the protected individual's receipt of sensitive services in the name of the protected individual at the address or telephone number on file.

This includes most forms of communication including bills, EOBs etc.

"Sensitive services" is defined in the statute to include services to which minors may consent under state law, including minor consent sexual health care (See Civ Code 56.05).

If a minor patient lives at the same address as their parent or guardian, information will be sent to that address (under B above) unless the minor patient gives the insurer an alternative address as described in A above. One way to submit an alternative address to an insurance company is for the minor to make a "confidential communications request". [Keep It Confidential](#) describes one way to submit a confidential communications request.

9. Are the insurance companies required to follow HIPAA policies when it comes to sending the bill to a minor's residence where parents also live?

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10. Are there any legal conditions for insurance companies to share or not share information about care and diagnoses with the policy holder (parent) if their child uses insurance for minor-allowed services?

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11. What about minors who are covered by their parents' insurance but want contraception and are worried that the insurance company would notify parents?

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12. With regard to eligibility, will the minor apply for Medi-Cal via their county?

I believe this is a question about the Minor Consent Medi-Cal program. The Minor Consent Medi-Cal program is a special confidential program for persons under 21 years of age. To qualify for the services a minor must be unmarried and considered living in the home of a parent. The program allows Minor Consent Medi-Cal eligibility based on only the minor's income and/or property. The application for services may be requested without parent's consent or knowledge. A minor does apply on their own behalf with their county. Two examples are [Fresno County's application process](#) and [Los Angeles County's process](#).

Mental Health

13. Could you please talk more about AB 665 and the ability of children/youth with Medi-Cal to consent for mental health services?

Existing California law (Family Code 6924) allows minors ages 12 and older to consent to outpatient mental health treatment and counseling, 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 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.

Family Code 6924 was amended by the California legislature in 2023 ([Assembly Bill 665](#)). As a result, starting **July 1, 2024**, young people ages 12 and older may consent to outpatient mental health treatment and counseling, if the minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services. There are no additional requirements.

Nothing in state law restricts providers from billing services provided under Family Code 6924 to Medi-Cal or private insurance or limits them from receiving Medi-Cal reimbursement for these services.

There is a second law, passed in 2010, that also authorizes minors aged 12 and older to consent to outpatient mental health treatment and counseling. Health and Safety Code 124260 allows a minor to consent if the minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services. There are no additional criteria. State law says, however, that services provided under Health and Safety 124260 are not eligible for Medi-Cal reimbursement. (Welfare and Institutions Code 14029.8)

14. Can the mental health care include medication?

Family Code 6924 and Health and Safety Code 124260 both authorize minors 12 and older to consent to their own outpatient mental health therapy in some contexts. Both statutes include the following language: “This section does not authorize a minor to receive ...psychotropic drugs without the consent of the minor’s parent or guardian.”

15. What about minor consent for Behavioral Health services?

See answer to 13 and 14 above.

16. I heard consent laws also changed for substance use disorder and treatment. I'm curious what the change is. Does it relate to MAT and is consent needed for this?

AB 816, passed in 2023, and effective as of January 1, 2024, updates minor consent law for substance use treatment disorder. It does two things. First it adds Family Code 6929.1 to the law, which says: “Notwithstanding any other law, a minor 16 years of age or older may consent to opioid use disorder treatment that uses buprenorphine at a physician’s office, clinic or health facility, by a licensed physician and surgeon or other health care provider acting within the scope of their practice, whether or not the minor also has the consent of their parent or guardian.”

It also amends Family Code 6929. The amendment says: “Notwithstanding paragraph (1), a minor 16 years of age or older may consent to receive medications for opioid use disorder from a licensed narcotic treatment program as replacement narcotic therapy without the consent of the minor’s parent or guardian only if, and to the extent, expressly permitted by federal law.”

Sexual Assault/Reporting

17. Most sexual assault will be reported by the provider, correct?

Mandated reporters of child abuse must make a child abuse report if they have a reasonable suspicion that intercourse with a minor was coerced or in any other way not voluntary. The chart, [When Sexual Intercourse is Deemed Child Abuse in California](#), provides a quick summary of reporting rules and a longer guide on the same page provides more details about reporting sexual assault, including definitions. The chart will be updated by January 2024, so please check back at teenhealthlaw.org then for the most updated version.

18. In the National Center for Youth Law handout with the table addressing when sexual intercourse with a minor must be reported, there is an asterisk at the bottom that states that the worksheet addresses mandated reporting of vaginal intercourse. I was wondering why the table and information doesn't apply to other types of sex?

The chart will be updated in January 2024 to address more examples. Please check back at teenhealthlaw.org then for the most updated version.

19. If an 18-year-old is pregnant and their partner is 35, should this be reported?

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Guardian Related

20. Does consent for contraception also include assurance that info will not be shared with parents or is the sharing with parents a separate set of laws?

Consent and confidentiality are two separate sets of laws. When minors consent for contraception HIPAA and state law says that a health care provider is not permitted to inform a parent or legal guardian without the minor’s consent, the provider can only share the minor’s medical information with them with a signed authorization from the minor. The chart, [California Minor Consent and Confidentiality Laws](#), provides a summary of the rules regarding parent/guardian informing.

STD Related

21. Does STI treatment include medications?

Yes. A minor 12 years of age or older who may have come into contact with a sexually transmitted disease may consent to medical care related to the diagnosis or treatment of the

disease. A minor who is 12 years of age or older may also consent to medical care related to the prevention of a sexually transmitted disease. State law defines “medical care” as “X-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care under the general or special supervision and upon the advice of or to be rendered by a physician and surgeon licensed under the Medical Practice Act.” Family Code 6902.

Minor Consent

22. Even though a young adult crosses into California for her abortion, it doesn't matter that she came into California just for the abortion?

No. California law applies. This [State of California website](#) contains information on abortion care for people who come to California specifically for abortion services.

School Related

23. Can you discuss overlap of FERPA and HIPAA at School Base Health Clinics?

Please see [“HIPAA or FERPA? A Primer on Sharing School Health Information”](#) for more on this. Information from this Primer is also available in an interactive format on the [California School-Based Health Alliance website](#).

Other

24. Just FYI, CA's updated FAM §6929 may conflict with a federal regulation concerning minors and "maintenance treatment." Specifically, 42 CFR §8.12(e)(2):
<https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-8#8.12>