

# CALIFORNIA MINOR CONSENT LAWS: MENTAL HEALTH

## Which Minors can Consent for What Services and Providers' Confidentiality Obligations

SERVICE/TREATMENT	MINOR'S RIGHT TO CONSENT	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p style="text-align: center;"><b>ASSESSMENT*</b></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><b>Confidentiality Obligations</b> If the minor consents to care, the provider can only share the minor's medical information with the signed consent of the minor. Cal. Health &amp; Safety Code §§ 123110(a), 123115(a); Cal. Civ. Code § 56.10, 56.11; 45 C.F.R 164.502(g)(3)(i)(A); 45 C.F.R. 164.508(a).</p> <p>EXCEPTIONS TO CONFIDENTIALITY:</p>
<p style="text-align: center;"><b>OUTPATIENT COUNSELING</b></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:</p> <p>(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.”</p>	<p><b>Discretion to Inform Parents without Minor's Consent?</b> 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. While this exception allows providers to inform and involve parents in treatment, it does not give providers a right to disclose medical records to parents without the minor's consent. Cal. Fam. Code § 6924; 45 C.F.R. 164.502(g)(3)(ii).</p>
<p style="text-align: center;"><b>OUTPATIENT TREATMENT*</b></p> <p>* The statute does not define “treatment.” However, treatment in this context does NOT include convulsive therapy, psychosurgery or psychotropic drugs</p>	<p>Cal. Fam. Code § 6924.</p>	<p><b>Discretion to Inform Other Providers without Minor's Consent?</b> The health care provider may share medical information for treatment or referral purposes with other qualified professionals treating the client. However, the provider cannot share psychotherapy notes without written client authorization. Psychotherapy notes are notes of a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual's medical records. 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Welf. &amp; Inst. Code § 5328(a).</p>

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<p align="center"><b>PSYCHOTROPIC MEDICATIONS*</b></p> <p align="center">*"psychotropic medication" means those medications prescribed to affect the central nervous system to treat psychiatric disorders or illnesses.</p>	<p align="center">Only with parent or guardian consent, except a guardian cannot consent to experimental medications for a minor. Cal. Probate Code § 2356.</p>	<p><i>Confidentiality Obligations</i> If the parent/guardian consents to care, the parent/guardian has a right to access the minor's medical information and the provider can only share the minor's information with others with the signed consent of the parent/guardian. Cal. Health &amp; Safety Code §§ 123105(e); 123110(a).</p> <p>EXCEPTIONS TO CONFIDENTIALITY:</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 &amp; Safety Code § 123115(a)(2). <i>See also</i> 45 C.F.R. 164.502(g)(5).</p>
<p align="center"><b>INPATIENT TREATMENT</b></p>	<p align="center">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> The health care provider may share medical information for treatment or referral purposes with other qualified professionals treating the client.. However, the provider cannot share psychotherapy notes without written parent authorization. Psychotherapy notes are notes of a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual's medical records. 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Welf. &amp; Inst. Code § 5328(a).</p>
<p align="center"><b>PSYCHOSURGERY/ CONVULSIVE THERAPY</b></p>	<p>Only with parent consent. A guardian cannot consent to convulsive therapy. Cal. Probate Code § 2356. However, convulsive treatment shall not be performed on a minor under 12 years of age.</p> <p>Persons 12-15 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 surgery cannot be performed if the minor refuses. Minors 16 and 17 must give voluntary informed consent for convulsive treatment. Cal. Welf. &amp; Inst. Code §§ 5326.8, 5326.85.</p>	<p><i>Discretion to Inform Other Providers?</i> The health care provider may share medical information for treatment or referral purposes with other qualified professionals treating the client.. However, the provider cannot share psychotherapy notes without written parent authorization. Psychotherapy notes are notes of a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual's medical records. 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Welf. &amp; Inst. Code § 5328(a).</p>

SERVICE/TREATMENT	MINOR'S RIGHT TO CONSENT	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p style="text-align: center;"><b>DRUG COUNSELING by federally assisted drug treatment program*</b></p> <p>*An individual, program or facility is federally assisted if:</p> <ol style="list-style-type: none"> <li>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; <b>AND</b></li> <li>2. The individual or program: <ul style="list-style-type: none"> <li>(1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; <b>OR</b></li> <li>(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; <b>OR</b></li> <li>(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.</li> </ul> </li> </ol>	<p style="text-align: center;">“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>(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><b>Confidentiality Obligations</b> If the minor consents to care, the provider can only share the minor’s medical information with the signed consent of the minor. (Cal. Health &amp; Safety Code §§ 123110(a), 123115(a); Cal. Civ. Code §§ 56.10, 56.11); 45 C.F.R. 164.502(g)(3)(i)(A); 45 C.F.R. 164.508(a)</p> <p>EXCEPTIONS TO CONFIDENTIALITY:</p> <p><b>Discretion to Inform Parents without Minor’s Consent?</b> 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><b>Discretion to Inform Other Providers without Minor’s Consent?</b> 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>

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<p style="text-align: center;"><b>DRUG COUNSELING*</b>  <b>By individuals, programs or facilities that are not “federally assisted”</b></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 style="text-align: center;">“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><b><i>Confidentiality Obligations</i></b>  If the minor consents to care, the provider can only share the minor’s medical information with the signed consent of the minor. (Cal. Health &amp; Safety Code §§ 123110(a), 123115(a); Cal. Civ. Code § 56.10, 56.11); 45 C.F.R 164.502(g)(3)(i)(A); 45 C.F.R. 164.508(a)</p> <p>EXCEPTIONS TO CONFIDENTIALITY:</p> <p><b><i>Discretion to Inform Parents without Minor’s Consent?</i></b>  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. While this exception allows providers to inform parents of treatment and involve them in treatment, it does not give providers a right to disclose medical records without the minor’s consent. Cal. Fam. Code § 6929(c); 45 C.F.R. 164.502(g)(3)(ii).</p> <p><b><i>Discretion to Inform Other Providers without Minor’s Consent?</i></b>  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 &amp; Safety 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. Psychotherapy notes mean notes of a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual’s medical records. 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2).</p>

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<p style="text-align: center;"><b>GENERAL MEDICAL CARE for Emancipated Minors</b></p>	<p style="text-align: center;">An emancipated minor may consent to medical, dental and psychiatric care. Cal. Fam. Code § 7050(e).</p> <p style="text-align: center;">“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><b><i>Confidentiality Obligations</i></b> The health care provider is not permitted to inform a parent or legal guardian without minor’s consent. The provider can only share the minor’s medical records with the signed consent of the minor. Cal. Health &amp; Safety Code §§ 123110(a), 123115(a); Cal. Civ. Code § 56.10, 56.11; 45. C.F.R. 164.502(g)(2).</p> <p><b>EXCEPTIONS TO CONFIDENTIALITY:</b></p> <p><b><i>Discretion to Inform Parents without Minor’s Consent?</i></b> The health care provider has no discretion to inform parents without the minor’s signed consent.</p> <p><b><i>Discretion to Inform Other Providers without Minor’s Consent?</i></b> The health care provider may share medical information for treatment or referral purposes with other qualified professionals treating the client. However, the provider cannot share psychotherapy notes without written client authorization. Psychotherapy notes are notes of a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual’s medical records. 45 C.F.R. 164.502(a)(ii); 45 C.F.R. 164.506; 45 C.F.R. 164.508(a)(2); Cal. Welf. &amp; Inst. Code § 5328(a).</p>

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