



California Confidentiality Law: When Parents May Access Adolescent Medical Records

A parent's right to access adolescent medical records usually depends upon the health service provided, who consented or could have consented for the service, and the service provision site. In most cases, parents will have a right to access their child's records; however, in some cases, parents cannot access records until their teen provides them written authorization. This document reviews what California law says about parent access to records given who consented for care and the type of service provided. It does not address how service location may impact access. Therefore, the rules described in this document may not apply when services are provided in certain special settings, such as a school nurse's office or a Title X funded clinic. Providers in specialty service sites should seek additional information about parent access rights in those contexts.

I. PARENT ACCESS RULES BASED ON WHO CONSENTED FOR CARE

Parent Consented for Non-"Sensitive Services"¹ Care

Generally, parents and guardians have the right to inspect their children's records, as long as the records do not pertain to care for which the minor consented or *could have consented* under law. Cal. Health & Safety Code §§ 123110(a), 123115(a)(1). Cal. Civil Code § 56.10(b)(7); Cal. Welfare & Instit. Code § 5328(d).

However, parents do not have an absolute right to see their child's records. Under state law, providers may refuse to provide parents or guardians access to a minor's medical records when "the health care provider determines that access to the patient records requested by the [parent or 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." Cal. Health & Safety Code § 123115(a)(2).

Providers applying this exception in good faith to limit parent access to records shall not

¹ "Sensitive services" means services such as abortion, drug treatment, mental health care, pregnancy related services and STD services. Relevant sensitive services are described in section two of this document. Minor consent rights to sensitive service care are described in other publications available at www.teenhealthrights.org.

be liable for their refusal to share records. Cal. Health & Safety Code § 123115(a)(2).

Parent Consented for "Sensitive Services" Care

See section II below for access rules that apply when minors seek sensitive services under parent consent.

Emancipated Minor Consented for Care

When an emancipated minor consents for care, a health care provider is not permitted to share information or records with a parent without the minor's written authorization. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

Minor Living Separate and Apart from Parents Consented to Care

When a minor consents for care under Family Code section 6922, "[a] physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian." Cal. Family Code § 6922(c).

II. PARENT ACCESS RULES BASED ON TYPE OF SERVICE PROVIDED

Abortion

Irrespective of who consented for the care, a health care provider is not permitted to share information or records regarding abortion services with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1); *American Academy of Pediatrics v. Lungren*, 66 Cal. Rptr. 2d 210 (1997).

Drug- and Alcohol-Related Problems

Federal regulations establish special protections for substance abuse treatment records. Providers who meet certain criteria must follow the federal rule. (For criteria, see footnote six below.)²

² Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:

1. The individual, program, or facility is federally assisted. (Federally assisted means 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:
 1. Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR

For those providers who must comply with federal rules, the federal regulations prohibit disclosing any information to parents without a minor's written consent if the minor acting alone under applicable state law had the legal capacity to apply for and obtain alcohol or drug abuse treatment. 42 C.F.R. § 2.14; *see* Cal. Health & Safety Code § 123125. This holds true whether a parent also consents to the care or not. However, a provider or program may share with parents if the individual or 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.

For providers who do not have to follow the federal rules, state law applies. Cal. Health & Safety Code § 123125. Under state law, if a parent or guardian consents for a minor's drug or alcohol treatment, "the physician [must] disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure." Cal. Family Code § 6929(g).

When a minor consents for his own drug or alcohol treatment, state law prohibits a health care provider from sharing records with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1). At the same time, state law requires health care providers to involve the minor's parent or guardian in the treatment plan, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing care to the minor must state in the minor's treatment record whether and when the professional attempted to contact the minor's parent or guardian, and whether the attempt was successful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian. Cal. Family Code § 6929(c).

Involving parents in treatment will necessitate sharing certain otherwise confidential information; however, having them participate does not mean parents have a right to access all confidential records. Providers should attempt to honor the minor's right to confidentiality to the extent possible while still involving parents in treatment.

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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.

Family Planning, Including Contraception (Not Title X Funded)

Irrespective of who consented for the care, a health care provider is not permitted to share information or records regarding the prevention or treatment of a minor's pregnancy with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

HIV/AIDS

A health care provider is not permitted to share information or records regarding a minor's HIV/AIDS services with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

Infectious, Contagious, or Communicable Diseases (Reportable)

Irrespective of who consented for the care, a health care provider is not permitted to share information or records regarding a minor's treatment for reportable diseases with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

Mental Health Treatment and Counseling

When a parent or guardian consents for a minor's mental health treatment, the general rule applies and parents may access these records as described in "*Parent Consented for Non-Sensitive Services Care*" in section I above.

When a minor consents for mental health treatment, however, the health care provider is not permitted to share records regarding the minor consent mental health care with a parent or legal guardian without the minor's authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Welfare & Instit. Code § 5328; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

At the same time, state law requires health care providers to involve a parent or guardian in the minor's treatment unless, in the opinion of the professional person who is treating the minor, the involvement would be inappropriate. The professional must state in the client record whether and when the professional attempted to contact the minor's parent or guardian, and whether the attempt was successful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian. Cal. Family Code § 6924(d).

Involving parents in treatment will necessitate sharing certain otherwise confidential information; however, having them participate does not mean parents have a right to access all confidential records. Providers should attempt to honor the minor's right to confidentiality to the extent possible while still involving parents in treatment.

Pregnancy

A health care provider is not permitted to share information or records regarding the prevention or treatment of a minor's pregnancy with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

Rape Treatment

For minors 12 and older:

A health care provider is not permitted to share information or records about rape treatment with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10, 56.11; Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

For minors under 12 years of age:

The health care provider must attempt to contact the minor's parent or guardian and must note in the minor's rape treatment record the date and time of the attempted contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent or guardian committed the sexual assault. Cal. Family Code § 6928(c).

Sexual Assault Treatment

The health care provider must attempt to contact the minor's parent or guardian and must note in the minor's sexual assault treatment record the date and time of the attempted contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent or guardian committed the sexual assault. Cal. Family Code § 6928(c).

Sexually Transmitted Diseases

For agencies delivering services funded in full or in part by Title X, federal law mandates that "[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality." 42 C.F.R. § 59.11.

For all other services, state law applies. California law says that a health care provider is not permitted to share information or records regarding a minor's STD services with a parent or legal guardian without the minor's written authorization. Cal. Civil Code §§ 56.10(a), 56.11(c); Cal. Health & Safety Code §§ 123110(a), 123115(a)(1).

Suspected Child Abuse Victims

Neither the physician-patient privilege nor the psychotherapist-patient privilege applies

to information reported pursuant to this law in any court proceeding. Cal. Penal Code § 11171.2(b).

Can individuals be held liable for revealing confidential information outside the exceptions listed in federal or state law?

Providers can only share information without client authorization if an exception in state or federal law specifically allows the release. If no exception applies, providers who reveal confidential information without authorization may be held liable. For example, providers who reveal confidential information in violation of California's Confidentiality of Medical Information Act can be held criminally and civilly liable. Cal. Civil Code §§ 56.35, 56.36. In addition, the Department of Health and Human Services has the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach those rules. *See* 42 U.S.C. 1320d-6; 45 C.F.R. § 160, Subpart C.

Beyond criminal and civil sanction, professionals who violate confidentiality also put their medical license at risk. For example, certain health care providers who "willfully" fail to respect the laws related to patient access to health records (Health and Safety Code sections 123110 et seq.) are guilty of "unprofessional conduct." State law requires the state agency, board or commission that issued the providers' professional license to consider such a violation as grounds for disciplinary action, including suspension or revocation of the license. Cal. Health & Safety Code § 123110(i).