



# 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;"><b>ASSESSMENT*</b></p> <p>*Assessment means the evaluation necessary for an attending professional to assess whether a minor meets criteria of the minor consent statutes, cited in next column.</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 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.” Fam. Code § 6924.</p>	<p><b>Parent Access/Confidentiality Obligation</b></p> <p>If the minor consents or could have consented to care, the provider only may share the minor’s health information with parents or guardian with the signed authorization of the minor. Health &amp; Saf. Code §§ 123110(a), 123115(a); Civ. Code §§ 56.10(b)(7), 56.11(c); 45 C.F.R §§ 164.502(g)(3); 164.508(a).</p>
<p style="text-align: center;"><b>OUTPATIENT MENTAL HEALTH TREATMENT OR COUNSELING SERVICES*</b></p> <p>* This does NOT include inpatient psychiatric care, convulsive therapy, psychosurgery or psychotropic medications.</p> <p>*Treatment and counseling means provision of treatment and counseling on an outpatient basis by</p> <ul style="list-style-type: none"> <li>• A “professional person” as defined in Health and Safety Code 124260(a), for services provided under that statute. Please see the statute for more information</li> <li>• Certain agencies or a “professional person” as defined in Family Code 6924(a)(1), for services under that statute. Please see the statute for more information.</li> </ul>	<p style="text-align: center;"><u>Health &amp; 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 &amp; Saf. Code § 124260. If services are being provided by licensed interns or trainees, there may be obligations to consult with a supervisor regarding provision of minor consent care. See Health &amp; Saf. Code § 124260</p>	<p><b>Discretion to Inform/Involve Parents?</b></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. Fam. Code § 6924; 45 C.F.R. § 164.502(g)(3); Health &amp; Saf. Code § 124260(c).</p> <p>This description of applicable law presumes that these are not “Lanterman Petris Short” (LPS) services. See end note *** for more on LPS.</p>

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p align="center"><b>PSCYHOTROPIC MEDICATIONS*</b></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. Prob. Code § 2356.</p>	<p><b>Parent Access/Confidentiality Obligation</b> 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. Health &amp; Saf. Code §§ 123105(e), 123110(a); Welf. &amp; Inst. Code § 5328(d); Civ. Code §§ 56.10, 56.11. However, there are exceptions.</p>
<p align="center"><b>INPATIENT TREATMENT</b></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. Prob. Code § 2356.</p>	<p><b>Discretion to Refuse Access to Parents?</b> 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. Health &amp; Saf. Code § 123115(a)(2). <i>See also</i> 45 C.F.R. § 164.502(g)(5).</p>
<p align="center"><b>CONVULSIVE THERAPY for MINORS up to 15 years old</b></p> <p>(see page 5 for rules regarding convulsive therapy for 16 and 17 year old minors)</p> <p>See Welfare and institutions 5325 et al. for more on convulsive therapy and rights</p>	<p>Convulsive treatment shall not be performed on a minor under 12 years of age. Welf. &amp; 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. Welf. &amp; Inst. Code §§ 5326.8, 5326.85; see 5326.7</p> <p>For minors 12-15 years of age, parent consent is also necessary. A guardian cannot consent to convulsive therapy. Prob. Code § 2356.</p>	

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p style="text-align: center;"><b>DRUG or ALCOHOL TREATMENT by federally assisted treatment program*</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. Fam. Code § 6929(f).</p> <p>* Federal confidentiality law applies to any individual, program, or facility that is federally assisted. A program is federally assisted if:</p> <ol style="list-style-type: none"> <li>1. The individual, program, or facility is federally assisted. (Federally assisted means authorized, certified, licensed, supported or funded in whole or in part by any department of the federal government. Examples include federal, state or local programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds whether used directly for the substance use disorder program or not; or registered with Medicare)(42 C.F.R. §2.12);</li> </ol> <p>AND</p> <ol style="list-style-type: none"> <li>2. The individual or program is: <ol style="list-style-type: none"> <li>a. An individual or entity (other than a general medical facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or</li> <li>b. An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or</li> <li>c. Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers. (42 C.F.R. §2.11; 42 C.F.R. §2.12).</li> </ol> </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.” Fam. Code §6929(b).</p>	<p>Federal law generally prohibits disclosing any information to parents without a minor’s written consent. There is an exception, however, permitting the communication of relevant facts to the parents if the program director determines that a minor applicant for services 1) lacks capacity because of extreme youth or mental or physical condition to make a rational decision whether to consent to a disclosure to the parents AND 2) there is a substantial threat to the life or physical well-being of the minor applicant or another individual, and the disclosure of relevant facts to the parents may reduce that threat. 42 C.F.R. §2.14.</p>

<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. 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.” Fam. Code § 6929(b).</p>	<p><b>Parent Access/Confidentiality Obligations</b> If the minor consents to care, the provider only may share the minor’s medical information with the signed consent of the minor. Health &amp; Saf. Code §§ 123110(a), 123115(a); Civ. Code §§ 56.10(b)(7), 56.11(c); 45 C.F.R §§ 164.502(g)(3)(i)(A); 164.508(a).</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. 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. Fam. Code § 6929(c); 45 C.F.R.§ 164.502(g)(3)(ii).</p>
---	--	--

SERVICE/TREATMENT	CONSENT LAW	INFORMING/CONFIDENTIALITY OBLIGATIONS
<p><b>CONVULSIVE THERAPY for 16 and 17-year-old minors</b></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. Welf. &amp; Inst. Code §§ 5326.8; 5326.75; 5325(f).</p>	<p><i>Parent Access/Confidentiality Obligations</i> 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. Health &amp; Saf. Code §§ 123110(a), 123115(a); Civ. Code § 56.10(b)(7), 56.11(c); 45 C.F.R §§ 164.502(g)(3);164.508(a).</p>
<p><b>GENERAL MEDICAL CARE for Emancipated Minors</b></p>	<p>An emancipated minor may consent to medical, dental and psychiatric care. 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. Fam. Code § 7002.</p>	<p><i>Discretion to Inform Parents?</i> The health care provider has no discretion to inform parents without the minor’s signed authorization.</p>

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. **This chart provides legal information, not advice. Providers are encouraged to speak to their own legal counsel for advice on application of these laws.**
- \*\* 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 Fam. Code § 6924, Health & Saf. Code § 124260 and Welf. & Inst. Code § 14029.8 and look for more information on [www.teenhealthlaw.org](http://www.teenhealthlaw.org)).
- \*\*\* Lanterman Petris Short (LPS) services. Many publicly funded mental health services and most inpatient care are LPS services. A complete list of LPS services is found at Health & Safety § 5328. LPS has its own confidentiality protections. For other services, The confidentiality rule in Civil Code § 56 et al may apply.

This chart may be adapted or reprinted providing any adaptation or reprinting be accompanied by an acknowledgement of its source.