



## California: Minor Consent Rules for Adolescent Health Care

Because adolescents are not yet adults<sup>1</sup>, parents have the right to make most health care decisions on their behalf. This generally includes the right to consent to health care. However, states have carved out exceptions to this general rule. For the most part, the exceptions in California are found in state statutes. There are two types of exceptions - exceptions that allow other adults, such as caregivers, to provide consent, and exceptions that allow minors to consent for their own care. Some exceptions allow minors to consent to care when they seek a specific type of service; others allow minors to consent when they have reached a certain status or condition in life, such as marriage. In this document, California's current minor consent statutes are described. A summary of the statutes is provided on the last page.

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### CONSENT BY OTHERS

- **Consent by Court**

Upon application by a minor, a court may grant consent for medical or dental care for the minor if:

1. The minor is 16 years old or older and resides in this state; and
2. The consent of a parent or guardian is necessary to permit the medical care or dental care or both, and the minor has no parent or guardian available to give the consent.

Cal. Family Code § 6911(a).

- **Letter from Parents, Guardian, or Caretaker**

A parent, guardian, or related caregiver<sup>2</sup> may authorize an adult into whose care a minor has been entrusted to consent to medical or dental care for the minor. The authorization must be in writing. Cal. Family Code § 6910.

- **Minor Living with Related Caregiver**

A caregiver who is a relative<sup>3</sup> and who completes a caregiver consent affidavit<sup>4</sup> has the same rights to authorize medical, dental, and mental health care for

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<sup>1</sup> A minor legally becomes an adult at 18 years old. Cal. Family Code § 6500.

<sup>2</sup> A related caregiver means a related caregiver who has signed a caregiver consent affidavit. See "Minor Living with Related Caregiver," *infra*.

<sup>3</sup> "Relative caregiver" includes: "spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution." Cal. Family Code § 6550.

<sup>4</sup> A form prescribed by Cal. Family Code § 6552. See [www.teenhealthrights.org](http://www.teenhealthrights.org) for example.

the minor that are given to parents, except:

- If the minor is 14 years of age or older, no surgery may be performed upon the minor without either (1) the consent of both the minor and the caregiver; or (2) a court order, unless it is an emergency;
- The caregiver cannot consent to sterilization;
- The caregiver cannot consent to involuntary placement in a mental health institution;
- The caregiver cannot consent to experimental mental health drugs; and
- The caregiver cannot consent to convulsive treatment.

Cal. Family Code § 6550; Cal. Probate Code §§ 2353, 2356.

- **Minor Living with Non-related Caregiver**

A non-related caregiver who completes a caregiver consent affidavit may consent to school-related medical care on behalf of a minor. School-related medical care means medical care required by state or local governmental authority as a condition for school enrollment, including immunizations, physical examinations, and medical examinations conducted in schools for pupils. Cal. Family Code § 6550.

## **MINOR CONSENT BASED ON STATUS**

- **Emancipated Minor**

An emancipated minor shall be considered an adult for the purpose of consent to medical, dental, or psychiatric care. Cal. Family Code § 7050(e)(1).

A minor is emancipated if:

- The minor has entered into a valid marriage, whether or not the marriage has been dissolved;
- The minor is on active duty with the armed forces of the United States; or
- The minor has received a “declaration of emancipation” from a court.<sup>5</sup>

Cal. Family Code §§ 7002.

- **Minor Living Separate and Apart from Parents**

A minor may consent for his or her medical or dental care if he or she meets the following three requirements:

1. The minor is 15 years of age or older;
2. The minor is living separate and apart from her parents or guardian, whether with or without the consent of a parent or guardian, and regardless of the duration of this separation; and
3. The minor is managing the minor’s own financial affairs, regardless of the source of the minor’s income.

Cal. Family Code § 6922(a).

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<sup>5</sup> A court will emancipate a minor if the minor meets the criteria set out in Family code section 7120 and the court determines that emancipation would not be contrary to the minor’s best interests. *See* Cal. Family Code §§ 7120,7122.

## MINOR CONSENT BASED ON SERVICES SOUGHT

- **Abortion**

Minors of any age may consent for the performance of an abortion. *American Academy of Pediatrics v. Lundgren*, 16 Cal.4th 307, 383 (1997).

- **Drug- and Alcohol-Related Problems**

“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. Family Code § 6929(b). However, this statute does not authorize a minor to consent to replacement narcotic abuse treatment. Cal. Family Code § 6929(e).

Consent Note: State law allows a parent or guardian to consent to medical care and counseling for a drug- or alcohol-related problem of a minor when the minor does not consent to the care. Cal. Family Code § 6929(f).

- **Family Planning**

Federal regulations establish special access rules for family planning services funded through Title X. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations. Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. 42 C.F.R. 59.5(a)(4). This regulation supersedes any state law to the contrary. *Planned Parenthood Assoc. of Utah v. Matheson*, 582 F. Supp. 1001, 1006 (D. Utah 1983); see *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10th Cir. 1985); *Doe v. Pickett*, 480 F. Supp. 1218, 1220-1221 (D.W.Va. 1979).

Thus, minors of any age may consent to family planning services when those services are funded in full or in part by Title X monies. For family planning services not funded by Title X, state consent law applies in most cases.<sup>6</sup>

Under state law, a minor of any age may consent to medical care related to the prevention or treatment of pregnancy. This includes contraception. It does not allow a minor to consent to sterilization. Cal. Family Code § 6925.

- **HIV/AIDS**

To the extent that HIV/AIDS services are funded in full or in part by Title X, minors of any age may consent. See “Title X Family Planning” *supra*.

In other cases, state law applies. California state law provides that minors 12 and older are able to consent to HIV testing and treatment. Cal. Health

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<sup>6</sup> Services funded by other federal programs also may operate under separate confidentiality and consent rules. In addition, constitutional law may provide an independent basis for providers to treat minors confidentially.

& Safety Code § 121020; Cal. Family Code § 6926(a).

- **Infectious, Contagious, or Communicable Diseases (Reportable)**

“A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.” Cal. Family Code § 6926(a).

- **Mental Health Treatment and Counseling**

“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.
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. Family Code § 6924(b).

This statute does not authorize a minor to consent to convulsive therapy, psychosurgery, or psychotropic drugs. Cal. Family Code § 6924(f).

- **Pregnancy**

A minor of any age may consent to medical care related to the prevention or treatment of pregnancy. This law does not allow a minor to consent to sterilization. Cal. Family Code § 6925.

- **Rape Treatment**

*For minors 12 years of age or older:*

“A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.” Cal. Family Code § 6927.

*For minors less than 12 years of age:*

“A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.” Cal. Family Code § 6928(b).

- **Sexual Assault Treatment**

“A minor of any age who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical

evidence with regard to the alleged sexual assault.” Cal. Family Code § 6928(b).

- **Sexually Transmitted Diseases**

To the extent that STD services are funded in full or in part by Title X, minors of any age may consent. *See* “Title X Family Planning” *supra*.

In other cases, state law applies: “A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.” Cal. Family Code § 6926(a).

- **Suspected Child Abuse Victims**

“A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of a child without the consent of the child’s parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.” Cal. Penal Code § 11171.2(a).

In addition, “if a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that a child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent. Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.” Cal. Penal Code § 11171.5(a).

## **CALIFORNIA MINOR CONSENT RULES: A SUMMARY**

### **CONSENT BY OTHER**

Consent by Court

Letter from Parents, Guardian, or Caretaker

Minor Living with Related Caregiver

Minor Living with Non-related Caregiver

*Note: This is not a complete list of alternative consent statutes. There are many other circumstances in which a third party may be able to consent for an adolescent's health care.*

### **MINOR CONSENT BASED ON MINOR'S STATUS**

Emancipated Minor (Marriage, Armed Services, Emancipation by Court)

Minor Living Separate and Apart from Parents

*Note: No court has recognized a "mature minor" doctrine in California.<sup>7</sup>*

### **MINOR CONSENT BASED ON SERVICES SOUGHT**

Abortion

Drug- and Alcohol-Related Problems

Family Planning

HIV/AIDS

Infectious, Contagious, or Communicable Diseases (Reportable)

Mental Health Treatment and Counseling

Pregnancy

Rape Treatment

Sexual Assault Treatment

Sexually Transmitted Diseases

Suspected Child Abuse Victims

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<sup>7</sup> In some states, courts have recognized a "mature minor" doctrine. Generally, the mature minor doctrine states that providers may provide health care without parental consent if the minor is capable of giving informed consent and the care is not high risk. Under the "mature minor" doctrine, providers may provide this care even when state law does not expressly authorize minor consent. See A. English, K. Kenny, *State Minor Consent Laws: A Summary*, 2nd Edition, Center for Adolescent Health and the Law, 2003, for discussion of doctrine.