

**THE ALLIANCE FOR CHILDREN'S
RIGHTS**

**MEDICAL CARE
AND CONSENTS**



**WHO CAN CONSENT
TO MEDICAL CARE FOR
CHILDREN**



PARENTS RIGHT TO CONSENT
(Family Code 6903, 6920 and 6921)

- Parents may provide consent to treatment.
- Both parents have the right to make medical decisions unless a court has specifically limited the rights of one or both parents.
- **EXCEPTION:** If the law entitles a child to consent to treatment him/herself, a parent cannot overrule the child's decision.



LEGAL GUARDIANS

(Probate Code 2353 and 2356)

- Legal guardians generally have the same authority as parents to grant medical consent, with certain restrictions.
- Surgery requires the consent of any child **14 years or older**; or the court's consent. In **an emergency situation (based on medical advice)**, a guardian can authorize surgery if it is needed to prevent serious bodily injury or death.



LEGAL GUARDIANS

(Probate Code 2353 and 2356)

The legal guardian **may not** consent to:

- Placement of the child in a mental health facility
- Sterilization
- Experimental drugs
- Convulsive treatment
- Psychosurgery (Cal. Code Reg. 845)



CAREGIVER'S AFFIDAVIT

(Family Code 6550)

With a Caregiver's Affidavit:

- An adult relative who is providing 24 hour care may consent to medical treatment under the same circumstances as a legal guardian.
- A non relative caregiver may only consent to school related medical care, (for example: well –child exam for school enrollment, immunizations)

Exceptions: Even with a Caregiver's Affidavit, adult relatives may not consent to psychotropic medication, enroll a child in California Children's Services or add that child to their private health insurance.

Relative

(Family Code 6550)

For the purposes of the Caregiver's Affidavit:
"Relative" refers to family members by
blood or marriage, even after the marriage has
been terminated by death or dissolution.



Relative

(Family Code 6550)

This 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".



THIRD PARTY CONSENT

(Family Code 6910)

- A parent or legal guardian may give any adult written authority to consent to a child's medical care.
- The third party's authority to consent is limited to the treatment authorized in writing.
- The Third Party Consent allows non-related caregivers to consent to medical care for children without obtaining legal guardianship.
- A notarized letter from the parent or legal guardian can serve as a third party consent.

FOSTER PARENTS
(Health and Safety Code 1530.6)

- Foster parents (regardless of their relative status) may **ONLY** consent to ordinary medical treatment including, but not limited to:
 - Immunizations
 - Physical examinations
 - X-rays
- If the parents sign a Voluntary Placement Agreement, to place the child, the foster parents may consent to those items agreed to in writing by the parents. This agreement serves as a Third Party Consent.

Hypothetical

- An aunt brings her niece to a clinic. What medical care can she consent to for the child? With a Caregiver's Affidavit? With Legal Guardianship?
- A family friend brings a child to a clinic. What medical care can she consent to for the child? With a Caregiver's Affidavit? With a Third Party Consent or notarized letter?

**FOSTER CHILD PLACED WITH RELATIVE IN
PLANNED PERMANENT LIVING
ARRANGEMENT**

(FORMERLY CALLED LONG TERM FOSTER CARE)
(WIC 366.27)

- The court may order a child into a Planned Permanent Living Arrangement with a relative. The court may authorize the relative to provide consent for:
 - Medical
 - Surgical
 - Dental
- Advocacy Tip: For a child with chronic medical needs, obtaining the court order discussed above could facilitate quicker access to care.**

JUVENILE COURT

(WIC 369 and 739)

For children in foster care or under probation supervision, court authorization is required for anything beyond ordinary medical care. For example:

- Surgery and other invasive procedures
- Psychotropic medication (Los Angeles Superior Court Rule 17.6)
- Life Sustaining Medical Treatment (LASC 17.4)
- Do Not Resuscitate (DNR) Orders (LASC 17.4)

Medi-Cal

The majority of children in foster care and in out-of-home care qualify for Medi-Cal. Medi-Cal may require a pre-authorization called a Treatment Authorization Request (TAR) for services beyond ordinary medical care.

Advocacy Tip: Medi-Cal is required to send a Notice of Action either approving or denying the TAR. There is a formal appeal process for any treatment denial.

Hypothetical

A foster parent (grandmother) brings her grandson to the doctor. It is determined that he has tonsillitis and needs antibiotics. Can the grandmother consent? What if it is determined that the child needs a tonsillectomy – can the grandmother consent to the surgery?

COURT CONSENT
(Family Code 6911)

For non foster children:

Upon application by a child, the court may grant consent for medical or dental care for the child if the court determines all of the following:

- The child is **16 years of age or older** and
- resides in California;
- There is no parent or guardian available to give consent.

**CHILDREN'S RIGHT TO CONSENT TO
MEDICAL OR DENTAL
TREATMENT**



INTRODUCTION

- **In California the age of majority is 18.** Generally, medical or dental treatment for children under 18 requires the consent of an adult. However, California law specifies certain medical care which children may consent to themselves.
- Some medical care for which children can consent requires that certain criteria be met, such as age and maturity.
- The holder of the right to consent to diagnosis and treatment is generally the person who can consent to the release of information regarding that diagnosis and treatment.
- Children in foster care and under probation supervision retain these same rights.

Minor Consent Services

- Children can apply for separate coverage under the Medi-Cal program for the confidential services discussed below.
- Many of these services are covered under the Family Planning Access to Care and Treatment (PACT) Program. Call 1-800-942-1054 to find the closest provider.
- For services not included under Family PACT, youth may need to seek treatment at a free clinic or program that specializes in adolescent care.

CHILD'S RIGHT TO CONSENT TREATMENT WITH NO AGE LIMIT



SEXUAL ASSAULT: TREATMENT AND DIAGNOSIS FOR CHILDREN UNDER 12

(Family Code 6928)

Note: may require parental notification

- A child victim of sexual assault may consent to diagnosis and treatment related to the sexual assault. Assaults include:
 - Rape
 - Sodomy
 - Oral copulation



**SEXUAL ASSAULT: TREATMENT AND
DIAGNOSIS**
(Family Code 6928)

- The treating professional must attempt to contact the child's parents or guardian unless he or she reasonably believes the parent or guardian committed the assault.
- The professional person shall record the date and time they attempted to contact the parent or guardian and whether the attempt was successful or unsuccessful.



**PREGNANCY: PREVENTION OR
TREATMENT**
(Family Code 6925)

- A child has the right to consent to all medical care related to the prevention or treatment of pregnancy.
 - A child has the sole right to decide whether to terminate a pregnancy or carry it to term without notification or consent by either the parent or the court.
- (See *American Academy of Pediatrics v. Lundgren* (1997) 16 Cal 4th 307.)
- A child may not consent to be sterilized without the consent of parent or legal guardian.



Hypothetical

- A 16 year old foster child wants to terminate a pregnancy. Who has a right to consent to the procedure? Who has a right to be informed? Does her age matter?
- A teen mother brings her baby in for treatment for a ear infection. Who can consent to care for the baby?

**CHILD'S RIGHT TO CONSENT
TREATMENT CHILDREN MAY CONSENT
TO AT AGE 12**



**MENTAL HEALTH: TREATMENT AND
RESIDENTIAL SHELTER SERVICES**

(Family Code 6924)

Note: parental notification may be required

- Outpatient mental health treatment and/or residential shelter services if the treatment professional determines:
 - The child is mature enough to participate intelligently in treatment, and
 - The child has been the victim of incest or child abuse, or
 - The child would be a danger to themselves or others.

**MENTAL HEALTH: TREATMENT AND
RESIDENTIAL SHELTER SERVICES**

(Family Code 6924)

- The treatment shall include involvement of the child's parent or guardian, unless it is determined by the professional person treating the child to be inappropriate.
- A treatment professional must make a record of any contact attempted, its success or failure, and/or the reason why the contact would be inappropriate.



INFECTIOUS, CONTAGIOUS, AND COMMUNICABLE INFECTIONS: DIAGNOSIS AND TREATMENT

(Family Code 6926)

- The treatment or diagnosis of any communicable infection that must be reported to the local health officer, or is a related sexually transmitted infection.
- Reportable infections are noted in Title 17 CFR 2500 and include such sexually transmitted infections as:
 - Chlamydia
 - Gonorrhea
 - Syphilis

And other communicable diseases such as:

- Hepatitis
- Tuberculosis
- Rubella



Hypothetical

A 15 year old boy comes in for treatment. It is determined he has a sexually transmitted infection? Who can consent to his treatment? Who has a right to know about his medical diagnosis and treatment?

ALCOHOL OR DRUG ABUSE TREATMENT

(Family Code 6929)

Note: parental notification may be required

- Treatment of an alcohol or drug related problem.
- A treatment plan shall include involvement of the child's parent or guardian unless it is determined by the professional person treating the child to be inappropriate.
- The treatment professional must make a record of any contact attempted, its success or failure, and/or the reason why the contact would be inappropriate.
- Must have consent of **minor 12 or older** to drug test.

RAPE TREATMENT
(Family Code 6927)

- A child 12 years or older may consent to medical care concerning the treatment of rape.
- NOTE: For a child 12 or older, there is no requirement that the provider attempt to notify the parent.



**CHILD'S RIGHT TO CONSENT
TREATMENT CHILDREN MAY CONSENT TO
AT AGE 15**



SELF-SUFFICIENT CHILD
(Family Code 6922)

A child may consent to medical or dental care if all of the following conditions are satisfied:

- Child is 15 years of age or older.
- Child is living separate and apart from the child's parents or guardian, with or without consent of a parent or guardian, and regardless of the duration of the separate residence.
- Child is managing his/her own financial affairs, regardless of the source of the child's income.



SELF-SUFFICIENT MINOR

(Family Code 6922)

- Parents or guardians are not liable for the costs of medical or dental care provided pursuant to this section.
- A physician, surgeon or dentist **may** advise the child's parents or guardian of the treatment given or needed, with or without the consent of the child. However, regardless of the parents' opinion, the doctor may provide treatment.
- Medical providers are advised to contact legal counsel prior to disclosing information regarding self-sufficient minors.



Hypothetical

- A 16 year old boy lives on the street. He has tonsillitis and needs an antibiotic. Who can consent to his care? Are his parents liable for his medical care?
- A teen mother brings her baby in for care. They are both sick. She is given antibiotics for her baby's ear infection. Can she consent to her own care?

BLOOD DONATIONS

(Health and Safety 1607.5)

- A child **15 years or older** may consent to blood donations and tissue penetration if they have written parental or guardian consent and physician consent.
- A child **17 years or older** may consent to donate blood and the penetration of tissue necessary for the donation.



HIV

- Los Angeles County Superior Court Local Rule 17.5 requires DCFS to request a court order for HIV testing of foster youth under 12 years of age, provided all of the following conditions are met:
 - Child is under 12 years old
 - Child is placed in out-of-home care
 - Parents/legal guardians have refused to consent or whereabouts are unknown
 - Parents have one or more of the following risk behaviors:
 - History of prostitution
 - Intravenous drug use
 - Needle-sharing
 - Multiple sex partners with unknown histories or with the above-cited risk factors
 - Or, Child is a victim of sexual abuse, which places the child at risk of exposure.
- Children 12 and older have the right to consent to diagnosis and treatment on their own.

If you have questions regarding Medical Consent issues that were not included above, contact

The Alliance For Children's Rights



213. 368-6010

www.kids-alliance.org



DEFINITIONS

Parent or Guardian

(Family Code 6903)

"Parent" refers to:

- both the biological or adoptive parent(s) if they both have legal custody,
- the parent or person having legal custody by court order
- the legal guardian of a child.



DEFINITIONS

Medical Care

(Family Code 6902)

“Medical care” refers to X-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care under the general or special supervision, and upon advice of, or to be rendered by, a physician and/or surgeon licensed under the Medical Practice Act.



DEFINITIONS

Dental Care

(Family Code 6901)

“Dental care” refers to X-ray examination, anesthetic, dental or surgical diagnosis or treatment, and hospital care by a dentist licensed under the Dental Practice Act.



DEFINITIONS

Outpatient Mental Health Care

(Family Code 6924)

“Outpatient mental health care” refers to the provision of mental treatment or counseling on an outpatient basis.

Residential Shelter Services

“Residential Shelter Services” refers to the provision of residential and other support services to children on a temporary or emergency basis in a facility that services only children.



If you have questions regarding Medical Consent issues that were not included above, contact

The Alliance for Children's Rights

213 368 6010

www.kids-alliance.org


