Monterey County Behavioral Health Policy and Procedure

Policy Number	320
Policy Title	Minor Consent
References	• Health Insurance Portability and Accountability Act (HIPAA) • California Civil Commitment of Minors Act (W&I 5585 et seq) • California Family Code 6924(b), 6925, 6926, 6928, 6927, 6928, 6929 • California Health and Safety Code section 124260 • California Family Code 6550, 6552; Family Code 6910 • California Family Code 7120; 7140 et seq.; 7002, 7050(e)(1); 6922
Form(s)	• Minor Consent
Effective	

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I. Purpose

The purpose of this policy is to provide guidance regarding consent and confidentiality for health care services for minors receiving services from Monterey County Behavioral Health staff. The terms *health care* and *medical care* include assessment, care, services or referral for treatment for general medical conditions, mental health issues, and alcohol and other drug treatment. This policy includes services to minors who are treated as "adults" under the law for purposes of medical consent (emancipated and self-sufficient minors), and minors seeking *sensitive services* for which they are qualified to provide their own consent under the law. It also covers minors who do not meet any of the criteria for minor consent and for whom parent or legal guardian consent is required.

II. General Consent Policy

A. The Right to Consent

It is well recognized that competent adults, and in many cases, competent minors who are emancipated, self-sufficient, or who are seeking sensitive services, have the fundamental right of self-determination over their bodies. This means that they have a right to consent to, or refuse, recommended medical treatment. It also means that they have a right to know how private information will be used or disclosed, and how they may access their own records. These fundamental principles guide all treatment and services provided by Monterey County Behavioral Health.

The right to consent includes the right to "not consent" and no minor who meets the legal criteria to provide their own consent will be forced to receive services against his/her will except in the case of involuntary treatment under the California Civil Commitment of Minors Act because they are a danger to self, others, or gravely disabled, or in rare circumstances where their capacity to consent/refuse services is in question and someone else, typically a parent or legal guardian, consents for them.

B. When Consent Does Not Have to be Obtained

Individual counseling and treatment is not always requested by minors who come into contact with Monterey County Behavioral Health Staff and in fact, many simply come in with a friend or family member, or obtain information from

76 Behavioral Health staff on a variety of healthcare topics in an educational setting.
77 For example, information may be provided by staff in a classroom setting about
78 eating disorders, drug addiction, smoking cessation, or domestic violence.
79 Medical charts are not opened for those in attendance, and ***consent is not***
80 ***required*** because in fact, no *care* or *medical treatment* is rendered and a
81 psychotherapist/client relationship is not created. Discussions are casual and no
82 formal assessment of the individual minor occurs.
83
84 **C. When Consent Must Be Obtained**
85 When a minor or parent/legal guardian seeks, and receives, private counseling or
86 specific individual advice from members of the Monterey County Behavioral
87 Health clinical staff, consent is required and certain information must be provided
88 to the minor and/or the parent or legal guardian. Consent will be obtained for the
89 initial assessment, outpatient or inpatient care, or for care that results in referrals
90 to outside agencies or individuals.
91
92 **D. Implied Consent in an Emergency Situation**
93 In the case of an emergency situation, consent may be implied and the treatment
94 may proceed without consent so long as there is no evidence to indicate that the
95 minor or his/her parent/legal guardian would refuse the treatment. An
96 emergency will be deemed to exist if immediate services are required to alleviate
97 severe pain, or immediate treatment or diagnosis of a medical condition is
98 required because the condition could lead to serious disability or death if not
99 immediately diagnosed and treated.
100
101 If treatment is provided without consent pursuant to the emergency exception,
102 staff should document that an emergency situation exists, and describe in the
103 Medical Record the specific details pertaining to the emergency situation. If
104 there is any doubt about whether an emergency exists, a second staff member
105 should be consulted and if he/she agrees that an emergency condition exists, the
106 second person should document his/her concurrence in the Record. Efforts to
107 obtain actual consent should continue, for example by locating the parent, even
108 after the treatment has been provided.
109
110 “Implied consent” is also used by emergency room staff in local hospitals when a
111 minor is brought in for emergency treatment and the parent or legal guardian has
112 not yet been located. If the minor is in pain, or needs immediate care to alleviate
113 a medical emergency condition, the emergency will be documented and care will
114 be provided.
115
116 If the minor is having a psychiatric emergency, and meets criteria for an
117 involuntary hold because he or she is a danger to self, others or gravely disabled
118 due to a mental condition, appropriate staff will be contacted and an application
119 for involuntary evaluation and treatment in a locked designated LPS facility will
120 be initiated. (See Policy for Involuntary Treatment.)
121

E. Informed Consent

Prior to initiating services, the minor and/or the parent/legal guardian will be provided with sufficient information about the proposed treatment to make an informed choice to go forward with the treatment. This will include discussion about the nature of the minor's mental health or medical condition, and information about alternatives and the risks and benefits of the proposed treatment and alternatives.

F. Legal Capacity to Consent

A person is deemed to have legal capacity to consent to treatment if he/she has the ability to understand the nature and consequences of the proposed health care, including its significant benefits, risks and alternatives (including doing nothing), and can make and communicate a health care decision. A person's lack of mental capacity to consent to medical care may be temporary or it may be permanent, and the provider should determine capacity on a case-by-case basis whenever consent is sought. For example, a client who is clearly under the influence of drugs or alcohol may lack capacity temporarily, but could provide consent at a later time, when not so impaired.

Normally, treatment for minors (persons under age 18) requires the consent of a parent or legal guardian. This is because minors, due to their age, usually lack the legal capacity to give consent to medical care, regardless of their mental capacity or maturity. However, there are many exceptions to this rule.

A minor does have the capacity to consent to their own treatment if he/she is emancipated, self-sufficient, or meets criteria for "sensitive services" minor consent. But, if none of the exceptions apply, consent to treat a minor must be obtained from the parent or legal guardian.

G. Communication Barriers

If a minor, or the minor's parent or legal guardian (in the case of parent or legal guardian consent) cannot communicate with the provider because of language or other communication barriers, arrangements must be made for an interpreter, "signer" or other help with communication before consent is obtained and before treatment begins.

III. Minor Consent

A. Emancipated Minors

Certain minors are *considered to be "adults"* under the law for purposes of medical consent. They can consent to both *sensitive services* and to *non-sensitive services.* They still have to have mental capacity to consent, but they do not suffer automatic legal incapacity due to their young age.

These minors are clearly defined under the law as ***emancipated minors***. Their parents/legal guardians would not be financially responsible for their care and

would not be informed that they are receiving services unless the minor told them, or authorized staff to disclose information to them after signing an Authorization form permitting the disclosure.

Definition of Emancipated Minor: Emancipated minors include 1) minors 14 and older who have been emancipated by court order, 2) minors who are serving in the active US military forces, and 3) minors who are married or who have been married.

Before providing services to these minors staff should obtain a copy of their emancipation card or court order, a copy of their military ID card, or a copy of their wedding certificate and place this documentation in their medical chart.

B. Self-Sufficient Minors

Certain other minors may be treated as *"adults"* under the law for purposes of medical consent. Like emancipated minors, they too can consent to both *sensitive services* and to *non-sensitive services.* They still have to have mental capacity to consent, but they do not suffer automatic legal incapacity due to their young age.

These minors are often referred to as ***self-sufficient minors***. Their parents/legal guardians are still financially responsible for their care and can be informed that they are receiving non-sensitive services if the provider knows where to contact them. Typically, medical or dental procedures are provided to “self-sufficient” minors when their parents are not available and when it is appropriate to provide the care.

The law is not clear whether non-sensitive services mental health care (e.g., medications) can be provided to a minor under the self-sufficient minor laws, since the law specifically states that “medical or dental” care may be provided, but does not specifically identify mental health care as a separate category. If you are working with a minor aged 15 and older who meets the definition of a self-sufficient minor, and you wish to provide medications or inpatient care, use the chain of command to determine how to proceed on a case-by-case basis.

Definition of Self-Sufficient Minor: Self-sufficient minors are defined by law as minors aged 15 and older who are living separate and apart from their parents and who are also managing their own financial affairs regardless of their source of income.

C. Minors Seeking Sensitive Services

Minors seeking certain sensitive services may be legally authorized to provide their own consent to those services. The minor also controls whether or not the parent will have access to records generated as a result of receiving those services. When minor consent applies, sensitive services should not be provided over the minor's objection; in other words, ***even if the parent provides consent, non-consent by the qualified minor presents ethical issues and care should***

be delayed until consultation using the chain of command can be obtained on a case-by-case basis.

1. Mental Capacity to Consent: The laws that allow minors to consent to sensitive services remove the legal barriers due to age. However, mental capacity to provide consent and informed consent is still required. If a minor who otherwise qualifies for minor consent lacks mental capacity, and insists that there not be parental involvement, staff should use the chain of command so that appropriate steps may be taken. For example, Social Services could be notified for help in obtaining a court-appointed guardian for the minor for the purpose of medical-decision making.

2. Overview of Sensitive Services: Sensitive services that may be provided to minors without parental consent (or knowledge) fall into two categories:

- Services that can be provided to minors of <u>any</u> age; and
- Services that can be provided to minors 12 or older

<u>Services that can be provided to minors of any age</u>

a. Rape Care and Treatment: Minors of <u>any</u> age may consent to their own care and treatment for sexual assault and rape. However, under a separate provision of the law, if the minor is under the age of 12, or 12 and older seeking sexual assault care as opposed to rape care and treatment, the provider must attempt to notify the parent or guardian of the care and treatment that has been provided unless the provider believes that the parent or guardian committed the rape or assault.

b. Reproductive Healthcare: Minors of <u>any</u> age may seek care related to the treatment and prevention of pregnancy. Reproductive health care services include birth control, condoms, so-called "morning after" pills, abortion, and pre-natal care and labor and delivery.

<u>Services that can be provided to minors 12 or older</u>

c. Diagnosis and/or Treatment for Infectious, Contagious Communicable Diseases: Minors who are 12 or older 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 is one that is required by law to be reported to health authorities.

d. Prevention, Diagnosis and/or Treatment for Sexually Transmitted Diseases: Minors of 12 and older may consent to preventative care (e.g. HPV immunization or HIV prophylactic treatment after exposure), as well as diagnosis and treatment for sexually transmitted diseases.

e. Substance Abuse Programs and Minor Consent: Behavioral health care providers providing services at government funded substance abuse programs should consult policies and procedures that address the rights of participants in those programs. It should be noted that minors 12 or older may consent to medical care and counseling related to the diagnosis and treatment of a drug or alcohol related problem; since the law deems such minors to be legally competent to consent to such care, parents or guardians have no legal authority to demand drug testing of their minor children who are 12 or older. The law requires providers to involve the patient or legal guardian in the care, unless to do so would be inappropriate. The decision and reasons to involve, or not involve, the parent/legal guardian needs to be charted, as well as staff efforts to involve them.

f. Outpatient Mental Health Care/Residential Shelter Services and Minor Consent: There are two separate California laws that permit minors 12 and older to consent to outpatient mental health counseling services. The first is Family Code 6924(b). It states that minors 12 and older may consent to mental health treatment or counseling on an outpatient basis (and also, 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 would either 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 is the alleged victim of incest or child abuse.

The second, more recent law is found at Health and Safety Code section 124260. It removes the requirement that the provider must first determine that the minor 12 and older be “at risk” before services can be provided. Instead, the provider need only determine that the minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient mental health services. It also provides that MediCal funding may not be used as a payer source for treatment under this code section.

The attending professional person should clearly chart that any required “qualifying” criteria have been met if services are provided pursuant to either of these provisions of the law.

Involvement/Notification of Parent or Guardian: When outpatient mental health care or residential shelter services are provided, the laws state that it shall include the involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement

would be inappropriate. The professional person must state in the record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian. (Note: If outpatient mental health services are provided pursuant to Health and Safety Code 124260, the law states that the decision to involve, or not involve, the parents shall be made in collaboration with the minor patient.)

Parent/guardian consent is required if psychotropic medications are prescribed or if voluntary inpatient mental health facility services are provided. Further, the minor consent laws do not authorize a minor to consent to convulsive therapy or psychosurgery.

Consent from the parent is not required if the minor is involuntarily held for 72 hour assessment and treatment pursuant to Welfare and Institutions Code 5585.2 or 5150 et seq.

D. Financial Liability

The law provides that a parent or guardian is not liable for payment for adult children, for emancipated minors, or for the mental health treatment or counseling provided pursuant to minor consent “sensitive services” unless the parent or guardian participates in the mental health treatment or counseling, and then only for the services rendered with participation of the parent or guardian. The parent or guardian is not liable for residential shelter services unless the parent or guardian consented to the provision of those services.

When a minor seeks services under the *sensitive services* minor consent rules, the issue of whether the parent's insurance will be billed or not must be discussed with the minor, and specific permission to bill the parent's insurance plan should be obtained. Failure to obtain permission, or billing without the minor's knowledge and consent, could result in a breach of confidentiality.

IV. Parent or Guardian Consent Policy

A. Right of Parent/Guardian to Consent

It is the general rule that the parent or guardian must consent to medical or behavioral healthcare for minor patients, unless the minor has the right to consent to the care under minor consent laws. Only one parent is necessary to provide consent, and unless the provider is aware of evidence to the contrary, it can be assumed that the other parent has not objected. Adoptive parents have the same rights as natural parents.

B. Implied Consent in an Emergency

In an emergency, care may be provided to a minor without parent/guardian consent if necessary to alleviate pain or prevent serious medical harm if the parent or guardian has not yet been located. Unless there is evidence to indicate that the parent/guardian would object to the care, consent may be implied.

C. What the Right to Consent Includes

When services are provided to a minor patient who does not qualify for minor consent, the parent/guardian will have the right to consent to or refuse the recommended medical treatment. The parent or guardian shall also have a right to know how the minor's private medical information will be used or disclosed, and how they may access that information.

D. The Right to Refuse Treatment

The parent/guardian's right to consent includes the right to refuse treatment. However, health care providers who believe that the refusal of care will harm a minor client should immediately discuss the situation with a supervisor and if necessary, use the chain of command to determine next steps; if the refusal of care triggers suspicion of medical neglect, child protective services should be immediately contacted pursuant to mandated child abuse reporting requirements (i.e., if the refusal of care will result in harm to the child, a report must be made).

E. Divorced Parents

In the case of divorced parents, the right to consent rests with the parent who has legal custody. If the parents have "joint legal custody" usually either parent can consent to the treatment unless the court has required both parents to consent to the proposed care. In most situations, providers can presume that either parent can consent unless there is evidence to the contrary (some providers like to obtain consent from both divorced parents when treatment is provided to a minor child, but again, this is not usually required by the court).

F. Delegation of Authority to a Third Party

A parent or guardian who has the legal authority to consent to care for the minor child has the right to delegate this authority to other third parties (aged 18 and older); for example, the parent may delegate authority to consent to medical care to the school, to a coach, to a step-parent, or to a baby-sitter who is temporarily caring for the child while the parent is away or at work. A copy of the written delegation of authority should be kept in the Medical Record.

G. Caregiver Affidavits and Caregiver Authority to Consent

In some cases, a “surrogate parent” is raising a minor child. If this adult is a *qualified relative* (often the grandparent, or an aunt or uncle, or older sibling) who has stepped into the role of parent because the biological parents are no longer willing or able to care for the child, he or she should fill out the ***Caregiver's Affidavit*** form which is used widely throughout California.

These so called Caregivers who have "unofficially" undertaken the care of the child are authorized by law to consent to most medical and mental health care and to enroll these children in school. Once they have completed the ***Caregiver's Affidavit*** form (which is then placed in the medical record) they may consent to medical or mental health care for the minor child; however, if the parent(s) returns, the "caregiver's" authority is ended, and once again the parent has authority to consent to or refuse care for the child. A Caregiver's Affidavit does not have to be "renewed" and can remain in effect until the parent returns, or until the child turns 18.

H. Abandoned Minors, Dependents and Wards of the Court

The court has the power to authorize medical and mental health treatment for abandoned minors, and for minors who are dependents or wards of the court (for example, kids in foster care or juvenile hall). Furthermore, the court may order that other individuals be given the power to authorize such medical and mental health treatment as may appear necessary, if the parents are unable or unwilling to consent. In some circumstances a court order is not necessary. For example, under certain circumstances, a police officer can consent to medically necessary care for a minor who is in "temporary custody."

I. Documentation When Treating Dependents and Wards of the Court

In situations where some adult other than the parent or guardian is providing consent, (unless it is an emergency) care must be taken to establish a non-parent's legal authority to consent to care before treatment begins. Often this requires identification of the child's status as well as the ability or inclination of the natural parents to provide consent. A copy of the Court Order delegating this authority (to a Foster Parent, for example) should be placed in the medical record before care is provided. For those treatments for which a minor can legally provide his or her own consent, no court order or other authorization is necessary when treating a dependent or ward.

J. Court Authorization to Consent

In rare situations a court may summarily grant consent to medical or mental health treatment upon verified application of a minor aged 16 or older who resides in California if consent for medical care would ordinarily be required of the parent or guardian, but the minor has no parent or guardian available to give the consent. A copy of the court order should be obtained and placed in the minor's medical record before treatment is provided pursuant to the order.

V. Obtaining Consent

A. Informing the Minor About the Law, Confidentiality, and Parental Involvement

When a minor presents for treatment at Monterey County Behavioral Health, the minor will be provided with information about minor consent laws, and will be informed about the consent process. In the case of minor consent for outpatient

mental health services, residential care, or substance abuse treatment services, the issue of parental involvement will also be discussed. The decision about the appropriateness of parental involvement may be made at the first appointment, or may be delayed to a future date when the clinician feels that a more thoughtful decision can be made in collaboration with the minor client. If the minor is emancipated or if "sensitive services" minor consent can be obtained, the minor will be asked to sign the consent to treatment form.

Both state and federal law govern how private medical information may be used and disclosed by healthcare providers. Minors, or in the case of parent consent, the parent or legal guardian, will be told at the outset how their protected health information will be used and disclosed consistent with community standards. A ***Notice of Privacy Practices*** that reflects Monterey County Behavioral Health Policies and Procedures re: Confidentiality will be posted at each site and a copy will be provided to each minor client who consents to their own care, or to the parent or legal guardian who provides consent or participates in the minor's treatment.

If the minor could have consented to the care under the law, or in fact did consent to the treatment, information will not be provided to third parties without the written authorization of the minor, except as otherwise required or permitted by law.

B. Minors' Rights

If the minor could have consented to the care under the law, or in fact did consent to the treatment, the minor enjoys the right to access their own record, authorize disclosure to third parties, and amend/addend their record as permitted under HIPAA and state law. Other rights to control or access their information, limit disclosures, and be notified of breaches are described in the HIPAA Notice of Privacy Practices that will be provided to the minor and will be explained as part of the consent process.

476 **Attachment(s):**

Monterey County Behavioral Health Minor Consent

CLIENT: ___________________________________ DOB: _____________

481
482 **MINOR CONSENT**
483 I would like to receive services from Monterey County Behavioral Health (MCBH). I
484 know that I can change my mind about getting services here at any time. I can give my
485 own consent to these services because: (check any that apply)
486 ☐ I am a minor seeking "sensitive" services *(e.g., outpatient mental health services*
487 *and/or substance abuse treatment)*
488 ☐ I am emancipated *(e.g., married, active U.S. military, or by court order)*
489 ☐ I am a self-sufficient minor *(15 years or older, living separate and apart from*
490 *parent/legal guardian and managing my own finances)*
491
492 **MCBH HEALTHCARE TEAM**
493 I have been told how services will be provided. I understand that:
494 • The MCBH healthcare team may consist of specialists from different disciplines and
495 different licensure.
496 • Some of the healthcare team members may be trainees working toward graduate
497 degrees in psychology, social work, marriage and family therapy, nursing and/or
498 psychiatry.
499
500 **PRIVACY**
501 I have been told about how MCBH will protect my privacy and keep my health
502 information private. I have been offered a copy of the MCBH Notice of Privacy Practices,
503 which has information about how my private health information may be used and
504 disclosed under the law. I understand that in certain situations information must be
505 disclosed, for example if there is a reasonable suspicion of child abuse, or if there is a
506 threat to my physical safety or to the safety of others. I also understand that if I am
507 receiving services pursuant to minor consent for "sensitive services" that my provider
508 must involve my parent/legal guardian, unless doing so would be inappropriate.
509
510 **SHARING INFORMATION WITH OTHERS**
511 I understand that MCBH healthcare team members:
512 • May share my private healthcare information with each other to coordinate or
513 evaluate my care.
514 • May share my private healthcare information with healthcare professionals outside
515 MCBH in order to better provide services to me. For example, team members may
516 suggest that I get services from someone else in the community.

517 • May share information within the program its own operations, for example to
518 improve the quality and impact of the services they provide.
519
520 **MY RIGHTS**
521 I have been told that:
522 • I have a right to request a copy of my record.
523 • I have a right to ask that private information about me be shared with third parties
524 including my parent/legal guardian or others.
525

Client Signature: ________________________________ **Date:** ___________________

Staff Signature: ____________________________ **Date:** ___________________

526